Supreme Court, U.S.
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PASC No. 188 MAL 2005

In the

Supreme Court of the United States

Haiying Xi, Petitioner

v.

Bryn Mawr College et al, Respondents

On Petition For Writ of Certiorari
To The Supreme Court of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

Haiying Xi
Petitioner
213 S. 45th St
Philadelphia, PA 19104
215-222-5463

QUESTIONS PRESENTED

A. Whether Regents of the University of Michigan v. Ewing 474 U.S. 214, 106 S. Ct. 507 (1985) and the doctrine of academic freedom- a special concern to the First Amendment of the Constitution prohibit a college student from knowing of his teacher's critiques on his works and from requesting his teachers to clarify their comments on his works when their comments conflict with the textbooks and their own previous lectures after the teachers assigned a grade; especially when the school policy regulates that a student has the above rights ?

B. Under Regents of the University of Michigan v. Ewing 474 U.S. 214, 106 S. Ct. 507 (1985), whether college faculty members failed to exercise their professional judgment when they breached their own written policies to prohibit a student from reviewing a teacher's critiques on the final paper after assigning a low grade; to refuse to clarify their comments on the student's tests but to lie to the college authority that they did while their comments apparently conflicted with the textbooks; to assert that two faculty members had fully clarified their comments with the student without acquiring any clue regarding when, where, how such clarifications took place, what questions they had clarified and what their clarifications were; and finally to refuse a student's request to confront with two deceptive faculty members through a contest monitored by the Committee of the Program?

C. Under Regents of the University of Michigan v. Ewing 474 U.S. 214, 106 S. Ct. 507 (1985) and the doctrine of academic freedom, a special concern to the First Amendment of the Constitution, whether a court has to second guess the following facts: (1) should a college student have the right to review his teacher's critiques on his final paper after the teacher assigned a grade; (2) should a college student have the right to ask his teacher to clarify the critiques on his works when the teacher's critiques conflict with the textbooks; (3)if the event of the teacher's clarification really took place; (4) should the student have the right to an appeal when the teachers either prohibited the student from reviewing her critiques or lied to the College authority for the clarification that they never provided; and (5) if the college breached its own policies when a student was denied of the above rights but the above rights are clearly written in the college's policy books and are admitted by the Dean and the President of the College?

D. Under Regents of the University of Michigan v. Ewing 474 U.S. 214, 106 S. Ct. 507 (1985) and the doctrine of academic freedom, a special concern to the First Amendment of the Constitution whether or not a court may trench a college's academic freedom if the court makes an inquiry into the above facts.

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

- Julia H. Littell, faculty member
- Jim Martin, faculty member
- Carolyn Needleman, faculty member
- The Committee of the Doctoral Program
- Ruth W. Mayden, Dean of the Graduate School of Social Work and Social Research
- Nancy Vickers, President of Bryn Mawr College

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OPINIONS BELOW

The opinion of the highest state court to review the merits appears at Appendix E to the petition and is unpublished. The opinion of the superior court of Pennsylvania Eastern District appears at Appendix A to the petition and is unpublished. The opinion of the court of common pleas of Montgomery county PA appears at Appendix D to the petition and is unpublished.

JURISDICTION

The date on which the highest state court decided my case was August 24, 2005. A copy of that decision appears at Appendix E. The jurisdiction of this Court is invoked under 28 U.S. C. 1257 (a)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment of the Constitution of the United States of America, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievance."

STATEMENT OF THE CASE

A. Petitioner asked Respondents to return a final paper and to clarify their comments with Petitioner

Petitioner was a graduate student of the School of Social Work and Social Research, Bryn Mawr

College from September 1999 to May 2001. Petitioner's academic performance was rated as above average in the past three years until Petitioner was involved in a dispute with the members of faculty, especially with Ms. Littell over the issue with ideological implication. In May 2001, two faculty members Mr. Martin and Ms. Littell failed Petitioner's test and term papers. According to their short comments on Petitioner's test/papers, they failed Petitioner's tests/papers because of Petitioner's "apparent misunderstanding or confusion about the core concepts" of the learning subjects explained in the textbooks. (Mr. Martin's comments) A third faculty member, Ms. Needleman assigned Petitioner's final paper a very low grade. The low grade also resulted in Petitioner's disqualification to continue the program. However, Ms. Needleman refused to return the paper with her critiques for Petitioner to review.

In order to find the mistakes, Petitioner reviewed the textbooks and Mr. Martin and Ms. Littell's previous lectures along with their comments on Petitioner's test/papers. Petitioner found that some of their comments apparently conflicted with the basic academic concepts explained by the textbooks and others were against their previous instructions. (*Exhibit 1B attachment, 2A, 2B*) The followings are some examples.

1. Petitioner asked Mr. Martin to clarify his comments

Respondent Martin taught program evaluation. In the textbook used by Mr. Martin for this lecture, the logic of program evaluation is explained as below:

"The underlying logic of evaluation design for outcomes studies is twofold (a) to compare participants before they receive the program with their

situation afterward in order to see if they have made gains on key outcomes and (b) to compare program participants with an equivalent group of people who did not receive the program to find whether participants' gains exceed those made by non-participants." {*Evaluation, Weiss, (1998) page 193*}

According to Mr. Martin's lecture, Petitioner reviewed an evaluation design from the resource recommended by Mr. Martin. Petitioner found that this evaluation design did not establish previous data for outcomes and did not have an equivalent group to compare. Petitioner concluded that a conclusion could not be drawn from that evaluation design. Against his previous lecture, Mr. Martin failed Petitioner's paper and held that Petitioner misunderstood the basic logic of program evaluation because to him "these outcomes seem pretty clear". (*Exhibit 1-B attachment*)

After reviewing Mr. Martin's comments, Petitioner e-mailed him a letter and asked him, "When you say that outcomes seem pretty clear, yo mean that the outcomes caused by the program are clear? If there is a difference or no difference in the outcomes of job status between the ex-offender group and the non-offender group, what is your conclusion respectively? ...under this case, how do you determine the program has worked well for non-offenders based on the information we have? Do we know of the employment outcome for non-offenders prior to the program or we do not need to know of it before we make such a claim? (*Exhibit 1-B, attachment, page 2*)

Petitioner asked Mr. Martin to clarify his comments since his comments are in conflict not only with the textbook but also with his previous lecture.

2. Petitioner asked Ms. Martin to clarify her comments with Petitioner

Ms. Littell's comments contradicted with the textbooks and with her previous instructions in many places. Here, Petitioner just presents three examples. First, Ms. Littell listed two reasons to fail Plaintiff's final paper. One of the reasons was that construct validity and measurement properties had not been established. {Exhibit 2-B attachment (a)} As a college teacher, Ms. Littell understands that construct validity and measurement are established through pilot tests. Petitioner conducted the pilot test and presented the results to her.(*Exhibit 12 and 13- Participants' testimonies*) As a matter of a fact, her comment was written on Petitioner's tested instrument! {Exhibit 2-B attachment (a)} Instead of allowing Petitioner to report the outcome for construct validity, Ms. Littell instructed Petitioner to hold the test and report until her further notice. During the period, Petitioner asked her several times but she neither provided instruction nor accepted petitioners' test. Now, the question is how Ms. Littell could cite her own mistake not to allow Petitioner to conduct the test and to report the outcome as her reason to fail Petitioner's paper?

Second, Ms. Littell held that Petitioner made a major mistake in the final test when Petitioner explained the cluster sampling by citing an example of a city population in different neighborhoods from the textbook. She wrote "Not always" and "Cluster sampling is not based on premise that cluster are homogeneous." (*Exhibit 2-B, page 7*)

Ms. Litteel's comment of "Not always" conflicts with "general guideline" in the textbook.

"With a given total sample size, however, if the number of clusters is increased, the number of elements within a cluster must be decreased. In this respect, the representativeness of the clusters is increased at the expense of more poorly representing

the elements composing each cluster, or vice versa. Fortunately, **the factor of homogeneity can be used to ease this dilemma**. Typically, the elements composing a given cluster within a population are more homogenous than are all elements composing the total population...the residents of a given city block are more alike than are all the residents of a whole city... **The general guideline for cluster design, then, is to maximize the number of clusters selected while decreasing the number of elements within each cluster**. {*Research Methods for Social Work (1997) Rubin, A and Barbbie, E, p.260*}

After comparing her comment with the textbook and Petitioner's answer, Petitioner asked Ms. Littell to clarify her comment since it conflicts with the general guideline for cluster design. In addition, she never mentioned before that this general guideline must be abandoned in her class.

As to her comment of "Cluster sampling is based on premise that cluster are homogeneous" Petitioner sincerely asked her to point out where Petitioner made such a mistake. Ms. Littell cited this mistake as one of her causes to fail Petitioner's test. (*Exhibit 2-B, page 7*) However, she was not able to point out which sentence Petitioner wrote indicted such a mistake or she simply held that the textbook made a mistake when it explained, "**the factor of homogeneity can be used to ease this dilemma.**"

A third example is that when discussing the systematic sampling, Petitioner cited an example of an apartment building from the textbook. However, Ms. Littell held that Petitioner made a mistake by mixing up a cluster sample with a systematic sample. To find why it is a mistake, Petitioner presented her with the citation from the textbook (*Exhibit 2*-B)

"There is a danger involved in systematic sampling... As another example, suppose we select a

sample of apartments in an apartment building. If the sample is drawn from a list of apartments arranged in numerical order, there is a danger of the sampling interval coinciding with the number of apartment on a floor..." {*Research Methods for Social Work (1997) Rubin, A and Barbbie, E p 255*}

Petitioner asked her to clarify if the textbook made a mistake. If not, what was Petitioner's mistake?

B. The College's policies and Petitioner's rights

The College's policies clearly regulate students' rights and faculty's responsibilities.

Petitioner requested Ms. Needleman to return the final paper with her critiques. The Graduate School's Operating Procedure regulates, "Course work will be critiqued by the instructors and returned promptly." *(Exhibit 9, page 6)*

Petitioner asked Mr. Martin and Ms. Littell to clarify their comments on Petitioner's test/papers. The Students' Handbook regulates, "A quantitative and qualitative analysis of achievement of learning objectives, oral and written presentation, examinations and other educational outcome measures is also required. In addition, the instructor may choose to provide a written analysis of the student's performance as private communication between the instructor and the student." *(Exhibit 8, page 7)*

In addition to the above policy, Dean of the Graduate School also admitted, "You have the right to an explanation about the reasons for any grade you receive from a member of our faculty." *(Exhibit 4, Dean Mayden's letter)*

Petitioner asked the Committee of the Doctoral Program to urge Ms. Needleman to return the final paper with her critiques to Petitioner, to review Mr.

Martin and Ms. Littell' comments on Petitioner's test/papers along with the citations from the textbooks, and to urge Mr. Martin and Ms. Littell to clarify their comments with Petitioner because "the Director of the Doctoral Program is responsible for general administration of the Doctoral program." His responsibilities include "(e) Communicating students concerns about the program to appropriate parties;" "(f) Matching of courses to faculty strengths – course assignment should reflect the Doctoral Faculty's judgment about the most qualified person to teach each course;" and "...to supervise the PH. D of the General Faculty." (*Exhibit 9- The Graduate School's Operating Procedure, page 26 and 27*)

Up to this point, Respondents made their "academic decisions." Petitioner made inquires by following academic tradition and in accordance with the College's policies. Petitioner also honestly believes that Petitioner's inquires are in accordance with the Supreme Court's expectations of "uninhibited exchange of ideas among teachers and students." {*Keyishian v. Board of Regents, 385 U.S. at 603 87 S Ct at 683; Sweezy v. New Hampshire, 354 U.S. 234, 250, 77 S Ct. 1203, 1211, 1 L. Ed. 2d 1311 (1957) (opinion of Warren, C. T.)*} Neither the courts below nor the Supreme Court of the United States is invited to determine Petitioner's academic performance or Respondents' academic decisions. If Respondents could simply followed the School's policies, i.e., Ms. Needleman returned the final paper with her critiques; Mr. Martin and Ms. Littell clarified their comments with Petitioner and informed Petitioner why the textbooks were wrong; or the Committee of Doctoral Program started to take action after its faculty members breached the school' policies, Petitioner wouldn't have bought the case to the court. However the situation developed beyond Petitioner's

imagination.

C. Disputes emerged from Respondents' false claims that Mr. Martin and Ms. Littell clarified their comments with Petitioner and that Ms Needleman was not required to return the final paper to Petitioner

Petitioner didn't receive any response from the above four respondents. On 10/6/01, Petitioner reported the incident to Ms. Mayden, Dean of the School. Petitioner submitted Mr. Martin and Ms. Littell's comments along with the citations from the textbooks for her to review and asked her to find why the Committee of Doctoral Program and three Respondents did not respond to Petitioner's requests. *(Exhibit 3)*

Dean Mayden ignored Petitioner's request for the missing paper from Ms. Needleman but did talk to Mr. Martin and Ms. Littell about Petitioner's request for a clarification. In her letter to Petitioner, she admitted that Petitioner did have the right to an explanation. Then, she claimed that after receiving Petitioner's questions with the citations from the textbooks, Mr. Martin and Ms. Littell had provided "full explanations" to Petitioner. (*Exhibit 4, Dean Mayden's letter*) This was an absolute lie. A dispute immediately erupted regarding whether Mr. Martin and Ms. Littell clarified their comments with Petitioner.

D. Disputes escalated when the school authorities showed their reckless attitude towards the facts

After receiving Dean Mayden's letter, Petitioner sent her another letter and reported to her that the Mr. Martin and Ms. Littell lied to her. They

never explained Petitioner's questions and they never met Petitioner after May 2001. Petitioner requested an appeal. (*Exhibit 5- Petitioner's letter*) The College's policy regulates that students have the right to an appeal if they find that they are treated unfairly.

"A student who believes that she/he has been treated unfairly has the right to be heard. The Graduate School of Social Work and Social Research has in place both policies and procedures to follow." (*Exhibit 8- Student Handbook, page 9*)

"A student who wishes to appeal any decision regarding his/her status in the program shall submit a written appeal to the Dean who shall bring the case to the faculty of the Doctoral Program for final solution." (*Exhibit 9-The Graduate School's Operating Procedure, page 22*)

The School further regulates

"Since 1970s, the School has operated from the principle that members of the faculty and students are accountable to each other on an equitable basis." (*Exhibit 8-Student Book, page 6*)

Petitioner requested Dean Mayden to investigate whether Mr. Martin and Ms. Littell really clarify their comments with Petitioner and to allow Petitioner to contest with them. Petitioner also urged Dean Mayden to find why Ms. Needleman refused to return the term paper to Petitioner. Dean Mayden chose not to respond.

On 1/30/02, Petitioner reported to Ms. Vickers, President of the College. Petitioner urged her to find why Ms. Needleman refused to return the final paper. Petitioner asked her to find when, where, how Mr. Martin and Ms. Littell clarified their comments with Petitioner and what their explanations were if they claimed that they did explain Petitioner's questions. (*Exhibit 6-Petitioner's letter to President*) Without finding any clue, President Vickers asserted

that Mr. Martin and Ms. Littell provided "serious and thoughtful answers" to Petitioner's questions. (*Exhibit 7-President's letter*) President Vickers ignored Petitioner's request for Ms. Needleman to return the final paper with her critiques to Petitioner.

Petitioner finally realized that regardless of the facts, the Director of Doctoral Program, Dean of the School, and President of the College prepared to breach their own policies to cover their faculty member's wrong conducts. To protect the right and to find the truth, the only option left for Petitioner was to go to court. The courts should have the ability to find whether Ms.Needleman should release her critiques along with the final paper to Petitioner and whether the event of Mr. Martin and Ms. Littell's clarification of their comments with Petitioner really took place.

E. Respondents' defense and the lower courts' conclusion on the facts

Respondents' strategy was to deny the facts and to avoid the issues for the case. Petitioner averred that Respondents breached the School's policy and presented that Ms. Needleman refused to release the final paper with her critiques to Petitioner. Respondents "denied that any final paper was required to be returned in this particular course." (*Respondents' Answer to Petitioner's Second Amended Complaint, paragraph 122 and 150*). To rebut Respondents' argument, Petitioner presented the School's policy- "Course work will be critiqued by the instructor and returned promptly." (*Exhibit 9- the Graduate School's Operating Procedure, page 6*), Respondents chose not to mention this issue again.

As to the issue of whether the event of Mr. Martin and Ms. Littell's clarification of their comments with Petitioner took place, Respondents

changed their story from time to time. They claimed that they provided "full explanations" and "serious and thoughtful answers" (*Exhibit 4 Dean's Letter and Exhibit 7, President's Letter*) initially but retreated late. Now they argue that their written comments on Petitioner's test/papers are their clarification to Petitioner's questions after reading their comments.[1] In other words, Respondents argue that **before** Mr. Martin wrote, "I am glad to review [your questions]...Please follow up with me that week of anytime in August" in his e-mail dated 6/11/01, he had already clarified his comment with Petitioner! (*Exhibit 1-C Mr. Martin's e-mail*)

Respondents never responded whether the Committee of Doctoral Program should review Petitioner's reports and citations from the textbooks and whether Petitioner had the right to a contest according to Respondents' written policies. They simply avoided these issues.

The courts below showed reckless and biased attitude towards the facts and issues under dispute. While the above facts and issues are the key points for the instant case and are clearly averred in Petitioner's Complaint, the trial court omitted all facts and issues in its Opinion. After deleting all the above facts and issues from its summary of the pleading, the trial court announced that the facts selected by the trial court, i.e., the leftover of the pleading, do not "support a legally cognizable claim under any of the nine purported causes of action in Plaintiff's Second Amended Complaint." (*Appendix D, p.10*) Petitioner will have a special section to demonstrate how the trial court carefully omitted all key facts and issues averred by

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[1] Respondents wrote, "Plaintiff/Appellant admitted that, at the minimum, professors provide written comments concerning his failure to meet academic expectation." *Appellees' Reply to Petitioner for Allowance of Appeal, page 2.*

Petitioner and even fabricated the fact in its nine causes of summary.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

The legal reason for the courts below to dismiss Petitioner's case was that Petitioner failed to state a claim for which relief could be granted. *Regents of University of Michigan v. Ewing [474 U.S. 214, 106 S. Ct. 597 (1985)]* and *Swartley v. Hoffner and Lehigh University et al (734 A 2d. 915 (Pa. Super 1999)]* are two legal authorities cited by the courts below for their decisions. Due to the reckless attitude towards the material facts and issues under the dispute, the courts below applied the above two legal authorities to the instant case against the original purpose upon which the *Ewing* case law was established, violated the doctrine of academic freedom, and created a series of legal dilemma.

A. The courts below ignored the fundamental differences for the issues of materi[illegible]facts under dispute between the Ewing Case and the instant case

1. Different claims

When determining *Ewing* case, the Supreme Court of the US recognized, "Ewing's claim therefore, must be that the University misjudged his fitness to remain a student in the Inteflex program. *Ewing, 474 U.S. 214. *226, 106 S. Ct. 507, **513*)

For the instant case, Petitioner did not ma[illegible] any claim regarding the fitness to remain in the program in the original pleading. Petitioner's first claim is that Ms. Needleman refused to return the term

paper with her critiques against the School's policy. Petitioner's second claim is that Mr. Martin and Ms. Littell refused to clarify their comments on Petitioner's tests with Petitioner but lied to the School that they did. The school's policy regulated and Dean of the School admitted that Petitioner had the right for an explanation. Petitioner's third claim is that all school authorities refused to take action after receiving four written reports from Petitioner regarding Ms. Needleman's refusal to return the final paper with her critiques and Mr. Martin and Ms. Littell's deceit about their clarification with Petitioner. The school authorities recklessly insisted that Mr. Martin and Ms. Littell provided serious answers to Plaintiff's questions without any clue regarding when, where and how the event of their explanations took place. The school violated it's the policy of equal accountability between faculty and students. Petitioner's fourth claim is that the school authority refused to Petitioner's request for a contest against the school's policy.

Following Petitioner's allegations, the courts' review of the instant case is very clear. The court needs to decide a) should Ms. Needleman return the final paper to Petitioner, b) did Mr. Martin and Ms. Littell clarify their comments with Petitioner as they claimed; c) did three faculty members perform their duties according to the school policy; d) did the college authorities' refusal to take action after receiving Petitioner's four written requests constituted a neglect of their responsibilities; e) should the school grant Petitioner's request for a contest if Mr. Martin and Ms. Littell lied about their clarification with Petitioner; and f) did Respondents breach their own policies?

The courts below did not address any issues listed above. Instead, they replaced Plaintiff's issues

with their own issues. The trial court insisted that Petitioner asked it to review Respondents' academic decisions. After changing the issues under disputing, the lower courts then claimed, "it is not the place of this Court to second-guess academic decision," (*Appendix D, the trial court's opinion, page 17*) when no academic decision needed to be second-guessed. Here, the trial held that it had to second guess if the Committee of Doctoral Program had to second-guess Petitioner's citations from the textbooks and if reviewing of these citations is "within the area of expertise" (*Appendix D, page 17*) for the Committee of Doctoral Program.

2. Different legal basis for the claims

For the *Ewing* Case, the Supreme Court wrote, "the constitutionally protected interest alleged by Ewing in his complaint, App. 15, and found by the courts below, derives from Ewing's implied contract right to continued enrollment free from arbitrary dismissal. The District Court did not find that Ewing had any separate right to retake the exam and, what is more, explicitly rejected the contract and promissory estoppels claims, finding no sufficient evidence to conclude that the defendants bound themselves either expressly or by a course of conduct to give Ewing a second chance to take Part I of the NBME examination.' The Court of appeals did not overturn the District Court's determination that Ewing lacked a tenable contact or estoppels claim under Michigan law."
*(474 U.S. 214, *223, 106 S Ct. 5078, **513)*

For the instant case, however, Petitioner has a clear a tenable contract or estoppels claim under Pennsylvania law. In *Swartley v. Lehigh University (734 A 2d. 915, Pa Super, 1999)*, the Superior Court of

PA held that "relationship between private college and students is contractual in nature, and therefore, students can bring cause of action against college for breach of contract where college ignores or violates portions of the written contract." *Id at 734 A 2d, at 919*. The same court further defined that "contract between private institution and student is comprised of the written guidelines, policies, and procedure as contained in written materials distributed to students over course of his enrollment in institution." *Id at 915*.

The Superior court dismissed Swartley's Appeal because "Swartley's brief fails to point to a single provision of the written contract between the university and its students that set forth the obligation of members of a dissertation committee or otherwise links appellant's allegation to the contractual relationship between the university and its student." *Id at 921*

For the instant case, Petitioner requested to review Respondent Needleman's critiques along with the final paper after she assigned a low grade. Petitioner requested Mr. Martin and Ms. Littell to clarify their comments since their comments apparently conflict with the textbooks and their previous instructions. Petitioner requested the School authorities to find why Ms. Needleman refused to return the final paper with her critiques. Petitioner requested the school authorities to investigate whether Mr. Martin and Ms. Littell really clarified their comments with Petitioner as they claimed. Finally, Petitioner requested a contest if Mr. Martin and Ms. Littell continued to lie. All these requests are clearly regulated as students' rights and Respondents' responsibilities admitted by Dean Mayden and written in the School's policy books Student Handbook (*Exhibit 8*) and the Graduate School Operating Procedure (*Exhibit 9*). Petitioner has cited these

policies one by one in the Statement of the Case under B section.

Petitioner believes that Student Handbook and the Graduate School Operating Procedure are indeed "written guidelines, policies, and procedure as contained in written materials distributed to students over course of his enrollment in institution", *Id at 734 A 2d, at 915* which fits the Pa Superior Court's definition of a contract between a student and a private educational institute.

Facing the above provisions and the clear case law, the courts below were indeed required by Petitioner to determine should Respondents "bound themselves either expressively or by a course of conducts" (*Ewing at 513*) to inform Petitioner of the reason for the grade and to clarify their comments with Petitioner since their comments apparently conflicted with the textbooks. However, the courts below violated their own precedent. They confronted clear provisions cited by Petitioner from Respondents' written policies distributed to students but chose to ignore them.

3 Claims emerged from different procedural backgrounds

For *Ewing case*, the Supreme Court of the United States found, "...for under proper analysis the refusal may constitute evidence of arbitrariness even if it is not the actual legal wrong alleged. The question, then, is whether the record compels the conclusion that the University acted arbitrarily in dropping Ewing from the Inteflex program without permitting a reexamination. (*474 U.S. 214, *225, 106 S. Ct. 507, **513*)

However, for the current case, the question is indeed whether the record compels the conclusion that

College acted arbitrarily when

- Ms. Needleman refused to return the final paper with her critique to Petitioner against the College policy and falsely claimed that she was not required to return it;
- Mr. Martin and Ms. Littell didn't clarify their comments with Petitioner but lied to the school authorities that they did
- the college authorities refused to take action after receiving four written requests from Petitioner for the missing paper and for Mr. Martin and Ms. Littell's false claims;
- Dean of the School and President of College insisted that Mr. Martin and Ms. Littell provided serious answers to Petitioners' questions without any clue regarding when, where, how they answered Petitioner's questions and what their explanations were;
- the School refused to grant Petitioner's request for a contest against its own policy.

One of the key issues confronted by the courts was indeed whether Respondents' above series of 'refusals' in handling Petitioner's requests may constitute evidences of arbitrariness since it is clear that Respondents' refusals were against their own policies.

4 The lower Courts' reckless attitude towards the material facts under dispute

The following are two of several issues of material facts under dispute. First, should Ms. Needleman inform Petitioner of her reason for the grade by releasing the term paper with her critiques to Petitioner? Second, whether Mr. Martin and Ms. Littell clarified their comments with Petitioner as they reported to the Scho[illegible]? The courts below

demonstrated their recklessly and extremely biased attitude towards these two facts under dispute.

The trial court's summary of the facts is composed of twelve paragraphs named as the Operative Pleading. (*Appendix D, page 7-9*) The contents of these paragraphs were cited by the trial court from Petitioner's Pleading[2] and eight evidential exhibits. Among these eight exhibits, five of them are Petitioner's letters to Respondents and three of them are Respondents' letters to Petitioner. The trial court cited Petitioner's letters dated 6/9/01, 8/11/01, 10/6/01, 12/11/01, and 1/30/02. (Exhibit 1-B attachment; 2-A B C; 3; 5; and 6) Except for the first e-mail letter dated 6/9/01, all other four letters contained Petitioner's request to ask Ms. Needleman to return the final paper or to ask the various school authorities why Ms. Needleman refused to return the paper. However, when citing the contents from Petitioner's letters to form its version of Operative pleading, the trial court carefully omitted Petitioner's request for the missing paper every single time. As a result of the trial court's highly biased selective citation, this key issue of whether Ms. Needleman should return the final paper with her critiques simply disappeared in the trial court' summary of the facts.

Now let's review how the trial court killed the second issue –whether Mr. Martin and Ms. Littell clarified their comments with Plaintiff as they claimed. In its twelve paragraphs' Operative Pleading and in its entire opinion, the trial court mentioned Mr. Martin and Ms. Littell's "explanations" only in two places. First, in paragraph 6, the trial court wrote, "On June 13, 2001, Dr. Martin responded by e-mail indicating his willingness to review the errors and or

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[2] See Petitioner's Second Amended Complaint paragraph 52, 58, 84, 149 and 150 where Petitioner clearly averred that Ms. Needleman refused to return the paper.

meet with Plaintiff personally at some time in the future." Second, in paragraph 9, the trial court wrote, "On November 1, 2003, Dean Mayden responded via letter her understanding that the professors gave Plaintiff full explanation." (Appendix D. p. 8)

After mentioning Mr. Martin's claimed willingness and Dean Mayden's self assertion of occurrence on page 8, the trial court never mention this issues again until page17 where the trial court directly jumped to its conclusion:

"We understand that Mr. Xi does not agree with the explanations provided by his professors for his failing grades...Nor we are able to force the Professors to re-explain in a different manner what they have already explained to Mr. Xi but which he continues to challenge."
(Appendix D page 18)

It is a mystery how the trial court could jump out with its conclusion without any clue regarding when, where and how the event of Mr. Martin and Ms Littell's explanation took place except for Mr. Martin's own claim about his willingness and Ms. Mayden's claim about its occurrence.

The trial court's conclusion conflicts with Respondents' own words.

Dean Mayden wrote to Petitioner, "you have the right to an explanation about the reasons for any grades you receive from a member of our faculty. I understand that you have received full explanations from Dr. Martin and Dr. Littell" (*Exhibit 4*)

President Vickers wrote to Petitioner, "I understand from her [Dean Mayden] that while the faculty may not have been able to respond to your full satisfaction, they have offered serious and thoughtful answers... " (*Exhibit 7*)

Now, following the trial court's conclusion, people have to conclude that "an explanation about the

reasons for any grades" could be offered to a student before the student knew of the grade and had questions about it. Also "serious and thoughtful answers" could be provided to a person without knowing about this person's questions.

It will be even more ridiculous when applying the trial court's conclusion to Mr. Martin's words. In his e-mail dated 6/9/01, Mr. Martin wrote: "I am away until the week of June 25th. Please contact me then if you like to meet." (*Exhibit 1-A, Mr. Martin's first e-mail*) After receiving Petitioner's questions about his comments Mr. Martin responded via his second e-mail on 6/1101. In his e-mail, Mr. Martin wrote, "I am glad to review them – and would be happy to meet with you in person. Unfortunately, because of my current summer schedule, I am available until after 23 July. Please follow up with me that week of anytime in August." (*Exhibit 1-C, Mr. Martin's second e-mail*)

However, following the trial court's logic, people have to conclude that Mr. Martin wanted to meet Petitioner after July 23 to re-explain the questions that he had already explained to Petitioner before June 25.

Only reckless attitude towards the facts can explain why the courts below committed such a low grade mistake. Thus, it is not that "Mr. Xi has not pleaded any facts necessary to support a breach of contract..." (*Appendix D, the trial court's opinion, page 16*) but that the courts below simply did not want to face the facts and carefully omitted every material fact averred by Petitioner from its summary of the pleading.

B. The courts below used the Ewing Case Law against the doctrine of academic freedom- a special concern to the first Amendment and created a series of legal dilemma.

1 University faculties' range of discretion is no relevance to the instant case

In Ewing case, the Supreme Court held, "University faculties must have the widest range of discretion in making judgment as to the academic performance of students and their entitlement to promotion or graduation." *Board of Curators, Univ. of Mo v. Horowitz, 435 U.S. 78, 96, n 6, 98 S. Ct. 948, 958, n 6 55 L. Ed. 2d 124 (1978) (Powell, J. concurring) Recited in Ewing as 474 U.S. 214, *226, 106 S. Ct. 507, **513)*

The trial court cited the above reason to support its decision. (*Appendix D, page17*) However, for the instant case, Respondents' range of discretion has never been an issue for dispute. The issue under dispute is whether Respondents, as college teachers, should inform a student of their range of discretion according to their own policy. For example, under what range of discretion Ms. Littell instructed Petitioner not to conduct the pilot test for the term paper and then failed Petitioner's paper for the reason that she told Petitioner not to conduct the pilot test? Or, under what range of discretion, Mr. Martin could suddenly evaluate the outcome for a program while he had neither previous data nor an equivalent group to compare? Or under what range of discretion did Ms. Needleman decide not to release the final paper with her critiques to Petitioner? No matter what range of discretion Respondents used, the widest range or even the wildest range, does not matter. Here, the only thing that matters is whether a student has the right to know of his teachers' range of discretion in order to understand where he "falls short of [his teacher's] expectations."(*Exhibit 7*)

The courts below replaced the Supreme

Court's principle that university faculty should have widest range of discretion in making judgment as to the academic performance with their own principle that university faculty should have the widest range of discretion in determining whether students are allowed to be informed of their range of discretion. Through this change, the courts below deprived every college student of the basic educational right to know of their teachers' range of discretion. If this case can stand, the law will lose its basis for justice, balance and equality since the young persons still have to pay thousands of dollars to attend a college but they have no right to know of their teacher's reason for the grades assigned to their works. Therefore, unless the Supreme Court of the United States makes it clear that except for a grade for each course at the end of each semester a college student does not have the right to request to review a teacher's critiques on his/her works and does not have the right to request a teacher to clarify his/her critiques, the Supreme Court's reasoning about university faculty's range of discretion in *Ewing* case simply can not be applied to the instant case.

2 Academic freedom thrives on the independent and uninhibited exchange of ideas among teachers and students

In *Ewing* case, the Supreme Court mentioned "Academic freedom thrives not only on the independent and uninhibited exchange of ideas among teachers and students (*Keyishian v. Board of Regents, 385 U.S., at 603, 87 S. Ct. at 683; Sweezy v. New Hampshire, 354 U.S. 234, 250, 77 S. Ct. 1203, 1211, 1 L.Ed. 2d 1311 (1957) (opinion of Warren, C.T.)* but also, and somewhat inconsistently, on autonomous decisionmaking by the academy itself, *University of*

California Regents v. Bakke, 438 U.S. 265, 312, 98, S. Ct. 2733, 2795, 57 L Ed. 2d. 750 (1978) (opinion of Powell, J.) Sweezy v. New Hampshire, 354 U.S. at 263, 77 S. Ct. at 1218 (Frankfurter, J concurring in result)

The trial court cited the above paragraph as its legal authority. (*Appendix D, page 16*) However, the courts below failed to recognize that the above citation traps the courts below in a legal dilemma. On one hand, before applying the above citation to the instant case, the courts below had to remove two legal barriers. First, the lower courts must rule that Petitioner's requests for a clarification of Respondents' comments on the papers and for a review of Ms. Needleman's critiques on the final paper are not in accordance with "the independent and uninhibited exchange of ideas among teachers and students." Second, the courts have to rule that a college student has no right to ask a teacher to explain his/her inconsistence. Students' request to understand faculties' inconsistencies would hurt faculties' academic freedom or would damage uninhibited exchange of ideas among students and teachers. On the other hand, if the courts below tried to remove these two legal barriers, the courts below would betray the original purpose upon which the Ewing case was established and violate the doctrine of academic freedom – a special concern of the first amendment. It is clear that Petitioner in the instant case never raised any issue against Respondents' inconsistence. Instead, Petitioner was eager to learn their inconsistence. It was Respondents, rather than Petitioner, with the lower courts' assistance, who tried their best to prohibit Petitioner from understanding their inconsistence.

3 The issues from the instant case do not require

a court to second guess

Corresponding to the Supreme Court's reasoning that "a federal court is not the appropriate forum ...evaluate the substance of multitude of academic decisions...decisions that require 'an expert evaluation of cumulative information and are not readily adapted to the procedural tools of judicial or administrative decisionmaking.' *Board of Curators, Univ. of Mo. V. Horowitz, 435 U. S. at 89-90, 98 S. Ct. at 954-955. Ewing 474 U.S. 214, *226, 106 S. Ct. 507, **514.*" the trial court claimed that "this court, however, is not equipped to second- guess those academicians because neither Research Methodology nor Program Evaluation are within our areas of expertise."(*Appendix D, page 17*)

The trial court distorted the facts and issues again. The case records demonstrate that after finding that two Respondents' comments on Petitioner's test/papers conflicted with the textbooks and that Ms. Needleman refused to return the final paper against the School's policy, Petitioner brought the issue to the Committee of Doctoral Program and school authorities rather than to the court. According to the School's policy, the Committee has the responsibility to determine a teacher's qualification and to communicate students' concerns about the program to appropriate parties.(*Exhibit 9, page 26*)

Only after did the Committee and other school authorities refuse to take action after receiving four written requests, Petitioner brought the case to the Court. If the courts below can not dispute this case record, then, the courts below need to determine or to "second guess" was not those academicians but the Committee of Doctoral Program and other school authorities who refused to take action after receiving four written requests from Petitioner. The issues faced

by the courts were whether these school authorities should take action, whether their refusal to take action constituted a breach of the school policies, and whether these school authorities had to second guess if Ms. Needleman should return the final paper to Petitioner and if the event of Mr. Martin and Ms. Littell's clarification of their comments with Petitioner really took place.

It is obvious that the courts below do not need to second guess or to study Program Evaluation and Research Methodology to avoid second guessing the above issue.

4 When an educational procedure starts, a student's right to inquire is superior to a teachers' freedom to respond

In *Ewing* case, the Supreme Court cited the second reason not to intervene in an academic decision. "Add to our concern for lack of standards is a reluctance to trench on the prerogatives of state and local educational institutions and our responsibilities to safeguard their academic freedom, 'a special concern of the First Amendment.' (*Keyishian v. Board of Regents, 385 U.S. 589, 603, 87 S. Ct. 675, 68317 L. Ed. 2d 629 (1967)*

In *Sweezy v. Hew Hampshire, 354 US. 234, 263, 77 Sect. 1203, 1218, 1 L.Ed. 2d 1311 (1957) (concurring in result)*, the Supreme Court defined the prerogative as four essential freedoms. "It is an atmosphere in which there prevail "the four essential freedoms" of a university –to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study."

By dismissing Petitioner's Complaint, the courts below have added three more freedoms:

freedom to determine which student can be informed of a teacher's reason for the grade, should a student has the right to ask a teacher to clarify his comments and lectures, and should a university bind itself to its written policies. The new addition damages the foundation of education.

It is a common understanding that a student receives education through communication with teachers and peer students. Communication is a free exchange without restrictions. Teachers give lectures, students ask questions, and then teachers respond to students' questions. An essential part of this communication for students is to receive feedback from their teachers for their various assignments including the term papers and tests so that students can find where their understanding goes wrong or how they can correct these mistakes. This procedure shall continue until students fully grasp the knowledge delivered by teachers. Then, students move to the next level of studying. In this procedure, if a teacher refuses to respond to students' questions emerging from their learning procedure, the only option left for that teacher is to resign since this teacher either is not able to or refuses to assume a full teaching responsibility. Otherwise, the educational procedure will fall apart regardless how much prerogatives or freedom a college maintains for itself.

Therefore, when an educational procedure starts, a student's right to inquire is superior to a teacher's freedom to respond. Students' right to review their teachers' critiques on their works and right to ask their teachers to clarify their critiques about a learning subject are even more fundamental than a college's prerogatives. These two rights can not be taken away under any excuse. If a university cannot understand this, four essential freedoms lose their basis.

How a student asks a teacher to clarify or to review his comments on the student's works would "trench on the prerogatives of state and local educational institutions" is a legal question that the lower courts' judgment "brings" to the Supreme Court for an answer. No matter what the lower courts' intentions are, the lower courts' application of the Ewing case law and their judgment have caused a series of legal dilemma. For example, Does the doctrine of academic freedom requires college students to pay thousand of dollars for their tuition but prohibits them from asking their teachers to clarify their comments or instructions and from reviewing their teacher's critiques on their works? How can the "independent and uninhibited exchange of ideas among teachers and students" proceed when a student is not allowed to ask a teacher to explain a question and even not allowed to review a teacher's critiques on his works? How could a judge fail the responsibilities to safeguard academic freedom when this judge tries to find for what reason a student was denied of the above two rights in his study? Does the first Amendment of the Constitution of the United States of America prohibit a college student from making an inquiry and from reviewing a teacher's critiques on his works?

The above dilemma can not be solved unless the courts below start to recognize that in a learning procedure, a student's right to inquire is more fundamental than a teacher's freedom to respond and a student's right to inquire must be protected under the doctrine of academic freedom.

5 The lower courts' application of the Ewing case law distorts the doctrine of academic freedom-a special concern to the first Amendment

In *Keyishian v. Board of Regents of the University of the State of New York, 385, U.S. 87 S. Ct. 675 at 684*, the Supreme Court has clearly explained how academic freedom should look like on U.S. campuses. "Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding." The Supreme Court further held that academic freedom is not just for teachers. "Our nation is deeply committed to the safeguarding academic freedom, which is of transcendent value to all of us not merely to the teachers concerned." *Keyishian at 603*. The Supreme Court emphasized the importance of freedom to inquire, "otherwise, our civilization will stagnate and die." *Id at 684*.

The courts below changed the Supreme Court's expectation about academic freedom in three aspects. First, students are no longer allowed to remain free to inquire and to gain new understanding. That's why the courts below allowed Ms. Needleman to refuse to return the final paper with her critiques to Petitioner and to preclude Petitioner from understanding for what reason Petitioner received a low grade. Second, the courts below limited the area for an inquiry. Starting with the instant case, university teachers' critiques or comments on students' works become a secret and are not open for students' inquiry. University teachers can fail students' works for any reason and students have no right to know about it as long as teachers claim it as their academic decision. Third, the courts below turned one of teachers' teaching responsibilities to a privilege. Under the name of academic freedom, except assigning a grade, a teacher is no longer required to inform a student of the reason for the grade. Students have to rely on a teacher's mercy for

receiving his/her feedback on their works. Through the above three unjustified changes, the courts below changed the doctrine of academic freedom – a special concern of the First Amendment of the Constitution- from promoting the "robust exchange of ideas" (*Regents of the University of California v. Bakke, 438 U.S. 265, 98 S. Ct. 2733 at 2760*) to excusing a small number of teachers from their responsibility and accountability.

C. The new issues call for a new case law

In this petition, Petitioner has demonstrated the following facts and issues for the Supreme Court of the United States to review.

First, although the courts below used Ewing case law as their major legal authority to back their judgments, none of their citations from Ewing case can be applied to the material facts emerging from the instant case. Therefore, the trial court had to delete Petitioner's averments of facts, for example, Ms. Needleman's refusal to return the final paper, every single time when citing the fact from Petitioner's four letters and Complaint in order to establish a fake factual ground for its judgment.

Second, because the courts below omitted the material facts under dispute, therefore, when Petitioner represented those facts, the lower courts' application of Ewing case law caused a series of legal dilemma. As a result, the courts below used Ewing case law as its weapon to attack the doctrine of academic freedom- a special concern of the first amendment.

Third, the reckless attitude towards the facts and the low grade mistakes committed by the courts below ruined the credibility of the judicial system.

Fourth, the effect of the lower courts'

judgment is to deprive thousands of students of their very basic rights for education, to damage the foundation of educational procedure, and to change the traditional educational practice upon which academic freedom thrives. The doctrine of academic freedom is at stake.

Fifth, it is clear that the material facts and issues emerging from the instant case are not covered by Ewing case law and by any other precedent case laws. There is no previous legal decision available to solve the dispute. A judicial decision about these issues will affect every student's very basic right and every teacher's level of responsibility in an educational procedure.

Sixth, a judicial decision about the new issues from the instant case will clarify the doctrine of academic freedom and its application for the situation thousands of students and universities encounter day by day. The Supreme Court has to determine whether a college can use academic freedom as its excuse to deprive a student of the very basic right for education against its written policy.

New issues call for a new case law so that our society can evolve into a better and fairer society day by day.

CONCLUSION

Based on the above reasons, the petition for a writ of certiorari should be granted and the judgments of the courts below should be reversed.

Date 2/7/06

Respectfully Submitted by

Haiying Xi

Haiying Xi, Petitioner
213 S. 45th St
Philadelphia, PA 19104

J. A30006/04

HAIYING XI, Appellant

IN THE SUPERIOR COURT OF PENNSYLVANIA

v. :

BRYN MAWR COLLEGE,
JULIA H.LITTELL,
CAROLYN NEEDLEMAN,
JIM MARTIN,
COMMITTEE OF DOCTORAL PROGRAM,
THE GRADUATE SCHOOL OF
SOCIAL WORK AND RESEARCH

No. 491 Eastern District
Appeal 2004

Appeal from the Order Entered
February 4, 2004,
in the Court of Common Pleas of
Montgomery County
Civil Division at No. 02-17367

BEFORE: FORD ELLIOTT, MONTEMURO,*
AND JOHNSON, JJ.[1]

FILED NOVEMBER 30, 2004

JUDGMENT ORDER

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[1] Retired Justice assigned to Superior Court.

Appendix A

Haiying Xi appeals, ***pro se***, from the order entered February 4, 2004, granting appellees' motion for judgment on the pleadings. We affirm.

Initially, we note that appellant failed to comply with the trial court's order to file a Rule 1925(b) statement. Instead, appellant "submitted a six page narrative recapitulation of every pleading he has previously filed, which is clearly in contravention of all applicable Rules of Appellate Procedure." (Trial court opinion, 4/15/04 at 3.) The trial court was forced to speculate as to what issues appellant wished to raise on appeal. (***Id.***) Appellant's claims could be dismissed on this basis alone. ***See Commonwealth v. Lord***, 553 Pa. 415, 719 A.2d 306 (1998), and its progeny.

Additionally, appellant has filed a patently defective brief. For example, his "Statement of the Questions Involved" is six pages long. (Appellant's brief at 2-7.) This is clearly in contravention of Pa.R.App.P. 2116(a), which "is to be considered in the highest degree mandatory, admitting of no exception."[2]

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[2] The statement of the questions involved must state the question or questions in the briefest and most general terms, without names, dates, amounts or particulars of any kind. It should not ordinarily exceed 15 lines, must never exceed one

While we recognize that appellant is a ***pro se*** litigant, it does not excuse his failure to comply with the Rules. ***See***, ***e.g.***, ***Commonwealth v. Maris***, 629 A.2d 1014, 1017 n.1 (Pa.Super.1993).

This court could have quashed or dismissed the appeal for the substantial defects in appellant's brief. ***See*** Pa.R.App.P. 2101,"Conformance with Requirements." However, because we heard appellant's argument and in the interest of expediting this matter, we will address the merits of the appeal.

After careful review, we agree with the Honorable William J. Furber, Jr., that appellant failed to state any claim for which relief could be granted. We affirm his order granting the appellees' motion for judgment on the pleadings on the basis of the trial court opinion, and adopt its reasoning as our own.

Order affirmed.

Judgment Entered

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Prothonotary

Date NOV. 30, 2004

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page, and must always be on a separate page, without any other matter appearing thereon. Pa.R.App.P. 2116(a).

Appendix A

J. A 30006/04

Haiying Xi : IN THE SUPERIOR COURT
Appellant : OF PENNSYLVANIA
v. :

BRYN MAWR COLLEGE
JULIA H. LITTELL, :
CAROLYN NEEDLEMAN
JIM MARTIN, COMMITTEE
OF DOCTORAL PROGRAM,
GRADUATE SCHOOL OF
SOCIAL WORK AND SOCIAL
RESEARCH
Appellee : No. 491 EDA 2004

ORDER

AND NOW, this 3rd day of February, 2005, IT IS HEREBY ORDERED:

THAT The application filed December 13, 2004, requesting reargument/reconsideration of the decision dated November 30, 2004, is DENIED.

PER CURIAM

Appendix B

J. A 30006/04

Haiying Xi : IN THE SUPERIOR COURT
Appellant : OF PENNSYLVANIA
vi. :

BRYN MAWR COLLEGE
JULIA H. LITTELL, :
CAROLYN NEEDLEMAN
JIM MARTIN, COMMITTEE
OF DOCTORAL PROGRAM,
GRADUATE SCHOOL OF
SOCIAL WORK AND SOCIAL
RESEARCH
Appellee : No. 491 EDA 2004

Appeal from the Order Entered February 4, 2004 in the Court of Common Pleas of Montgomery County Civil Division at No. 02-17367

BEFORE: FORD ELLIOTT, MONTEMURO, * AND JOHNSON, JJ.

ORDER

AND NOW, to-wit, this 22nd day of December, 2004, appellant's application for publication in the above-captioned case is hereby DENIED.

PER CURIAM

Appendix C

IN THE COURT OF COMMON PLEAS
OFMONTGOMERY COUNTY, PENNSYLVANIA
CIVIL ACTION-LAW

Haiying Xi : No. 02-17367

v. :

BRYN MAWR COLLEGE
JULIA H. LITTELL, :
CAROLYN NEEDLEMAN
JIM MARTIN, COMMITTEE
OF DOCTORAL PROGRAM,
GRADUATE SCHOOL OF
SOCIAL WORK AND SOCIAL
RESEARCH :

SUPERIORCOURT DOCKET
: No. 491 EDA 2004

FURBER, J. APRIL 15TH, 2004

OPINION

This Opinion is necessitated as a result of the Plaintiff's a appeal of our Order dated February 4th, 2004, which Order granted the Defendants' Motion for Judgment on the Pleadings, and dismissed the Plaintiff's Second Amended Complaint.

FACTS AND PROCEDURAL HISTORY

During the 2000-2001 academic year, Plaintiff Haiying Xi was enrolled as a doctoral candidate [Ph.D.] in the Bryn Mawr College Graduate School of Social Work and Social Research. Plaintiff was specially enrolled as a student

Appendix D page 1-18

in two classes taught by two names Defendants: Professor Julia Littell instructed the course entitled Research Methodology and Professor James Martin instructed the course entitled Program Evaluation. Plaintiff received failing grades in both of the classes resulting in his dismissal from the doctoral program.

On September 12, 2002, Plaintiff filed a thirty –five (35) paragraph Pro Se Complaint alleging the following three Counts: Negligence, Deception, and Negligence and Cover-Up. On December 30, 2002, in response to the Defendants' Preliminary Objections, the Plaintiff filed an expended two hundred forty one (241) paragraph Pro Se Amended Complaint alleging the following seven Counts: Wrongful Termination, Abuse of Due Process, Failure in Administration, Reckless Indifference to Other People's Rights and Interests, Malicious and Intentional Harm, and Civil Conspiracy.

Again, in response to the Defendant' Preliminary Objections, the Plaintiff filed a Pro Se Second Amended Complaint on February 25, 2003. This third and final pleading contains three hundred seventeenth (317) numbered paragraphs and alleges the above –cited seven Counts and two additional Counts: Breach of Contract and Intentional Infliction of Emotional Distress.

The Plaintiff's Second Amended Complaint was not served in accordance with the Montgomery County Local Civil Rules and did not include a "Notice to Defend" in contravention of Pennsylvania Rule of Civil Procedure 1018.1

Plaintiff's ultimate Complaint request a combination of legal, equitable, and punitive relief

including, but not limited to, the following: asking the trial court to investigate whether the grading of the Plaintiff's doctoral work by Bryn Mawr professors was "biased, prejudicial, arbitrary and capricious" and if the professors' decisions contained "contradictions;" asking the Court to order the Professors to change their grades to "satisfactory", having an arbitrator decide the grade dispute; ordering compensation in the amount of $20,000 per year for fifteen years; allowing Plaintiff to re-enroll in Bryn Mawr's doctoral program at any time he decides in the future; having Bryn Mawr pay for any other graduate program the Plaintiff wishes to attend at any other institution; ordering cumulative punitive damages in excess of five million dollars.

On March 25, 2003, the Defendants filed an Answer and New Matter to the Second Amended Complaint. On April 3, 2003, the Plaintiff responded, in contravention of the Pennsylvania Rules of Civil Procedure, by simultaneously filling both an Answer and New Matter to Defendants' Affirmative Defense as well as Preliminary Objection to Defendants' Answer and New Matter.

On April 25, 2003, a Status Conference was conducted in court before the undersigned, at which the Plaintiff was advised of our concern that he abide by the Pennsylvania Rules of Civil Procedure and Local Rules applicable to all parties including those individuals who exercise their privilege to fashion their own pleadings and represent themselves pro se during all the phase of litigation. The Plaintiff, having been so advised, was permitted by agreement of defense counsel and the Court to withdraw his Answer and New Matter and proceed on his

Preliminary Objections to the Defendants' Answer and New Matter.

On May 7, 2003, the Defendants filed a Motion to Strike the Preliminary Objections and the Plaintiff thereafter filed a timely Response on June 9, 2003. On June 23, 2003, this Court granted the Defendants' Motion and the Plaintiff's Objections were stricken.

On June 30, 2003, Plaintiff filed an Answer and New Matter to Defendants Affirmative Defense. The Defendants filed an Answer to Plaintiff's New Matter on July 2, 2003.

On July 10, 2003, the Pleading being closed, the Defendants filed a Motion for Judgment on the Pleadings.[1] After this Court's review of the file in

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[1] The Plaintiff also filed a series of voluminous Discovery Motions including four sets of "Request for Admission" and "amended Requests for Admission " on May 5, June 10, July 24 and July 27, 2003. The first Motion contains 240 individual requests. In response, the Defendants filed Motion for Protective Orders on May 13, June 27 and July 24, 2003 and also filed Answer and Objections to Interrogatories on august 14, 2003. On august 19, 2003, the Plaintiff filed a "Motion to Strike/ Dismiss Defendants' Objections to Interrogatories." The Plaintiff's Motions sometimes "cross paths" with the Defendants' corresponding pleading, and the Plaintiff's July 24th Request was by his own admission a duplicate filing. On September, 2, 2003, following a Discovery Hearing, we entered an Order granting the Defendant's Protective Motion and striking the Plaintiff's Request for Admission. On September, 2003, the Plaintiff filed a Motion for Reconsideration of our Order as well as a Motion for Sanctions. On September30, 2003, this Court denied Plaintiff's Sanctions Motion. On October 9, 2003, the Plaintiff again field a "Motion for Reconsideration of the Court's Order to Strike Plaintiff's Amended Requests for Admission and additional Request for Admission," which we denied on that same date. Finally, on October 23, 2003,, the

this matter, we granted Judgment on the Pleadings and dismissed the Plaintiff's Second Amended Complaint on February 4, 2004. On February 20, 2004, the Plaintiff filed a timely appeal with the Superior Court.

ISSUES

In response to this Court's Order directing him to file a Concise Statement of Matters Complaint of An Appeal, pursuant to Pennsylvania Rule of Appellate Procedure 1925 (b),the Plaintiff submitted a six page narrative recapitulation of every pleading he has previously filed, which is clearly I contravention of all applicable Rules of Appellate Procedure. Because such a Statement does not delineate the issues that may have been preserved for appeal, the Court's Discussion will pertain to the legal reasoning underlying our judicial determination to grant Judgment on the Pleadings and dismiss the Plaintiff's Second Amended Complaint.

DISCUSSION

I. JUDGMENT ON THE PLEEADING WAS PROPERLY GRANTED BECAUSE THE DEFENDANTS WERE ENTITLED TO HAVE THE CASE DISMISSED AS A MATTER OF LAW

Plaintiff filed a "Motion for Reconsideration or Clarification of Judge Furber's Order," which we denied on October 24th. On November 5, 2003, following a Discovery Hearing, the Court entered an Order staying a decision on the Plaintiff's "Motion to Strike/Dismiss Defendants' Objections to Interrogatories" pending an ultimate resolution on the Defendants' Motion for Judgment on the Pleadings.

Pennsylvania Rule of Civil Procedure 1034 governs the granting of Motions for Judgment on the Pleadings and states in pertinent part as follows:

Rule 1034. Motion for Judgment on the Pleadings

(a) After the relevant pleadings are closed, but within such time as not to unreasonably delay the trial, any party may move for judgment on the pleadings.

(b) The court shall enter judgment or order as shall be proper on the pleadings.

"To determine the propriety of awarding judgment on the pleadings, we must treat the motion as we would a preliminary objection in the nature of a demurrer, by accepting as true all well-pleading averments of the facts of the party against whom the motion is granted and considering against him only those facts that specially admits." Beckman v. Dunn, 276 Pa. Super. 527, 531, 419 A 2d 583, 585 (1980) [citations omitted]. "As an alternative to a demurer, the motion for judgment on the pleadings has the advantage of greater flexibility in that the motion may be brought after the pleadings are closed, where there are not issues of facts and it appears that a controlling question of law is ripe for decision." [2]

The operative pleadings in this case are comprised of the following:

The Plaintiff's Second Amended Complaint filed on February 25, 2003; The Defendants' Answer and Affirmative Defense filed on March 25, 2003;

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[2] Goodrich Amram 2d, Vol. 3, at 244-245 [citations omitted].

The Plaintiff's Reply to Defendants' Affirmative Defense and New Matters on June 30, 2003; and The Defendants' Answer to Plaintiff's New Matter filed on July 2, 2003.

Plaintiff's Second Amended Complaint contained 317 numbered paragraph and nine Counts alleging Wrongful Termination, Failure in Administration, Abuse of Due Process, Breach of an Implied Duty of Good Faith and Contract, Reckless Indifference to Other People's Right and Interest, Malicious and Intentional Harm, Deceit or Fraud, Civil Conspiracy, and Intentional Infliction of Emotional Distress.[3]

The Operative pleading reveal that:

1) Plaintiff attended the Bryn Mawr College Graduate School of Social Work and Social Research from September 2000 through June 2001.

2) Plaintiff failed two courses and was dismissed from the doctoral program in August 2001.

3) Plaintiff did not have a Bryn Mawr College e-mail account, in contravention of College Policy which required such an account to give and to receive official communication, and thus was not able to access to his Program Evaluation final exam.

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[3] Plaintiff's original Pro Se Civil Action Complaint was filed September 12, 2002, and contained 35 paragraphs alleging in three Counts: Negligence, Deception, and Negligence and Cover-Up. On December, 30, 2002, Plaintiff's Amended Complaint contains 241 paragraphs alleging in seven Counts: Wrongful Termination, Abuse of Due Process, Failure in Administration, Reckless Indifference to Other People's Rights and Interest, Malicious and Intentional Harm, Fraud, and Civil Conspiracy. Civil Action, super, at Exhibit 3

4) Dr. Martin sent Plaintiff a copy of his exam on June 7, 2001, by responding to Plaintiff's personal unofficial, non-college e-mail account.

5) On June 9, 2001, Plaintiff sent Dr. Martin another e-mail from his personal account, asking the professor to help him understanding the nature of his test mistake.

6) On June 13, 2001, Dr. Martin responded by e-mail indicating his willingness to review the errors and/or meet with Plaintiff personally at some time in the future.

7) On August 11, 2001, Plaintiff wrote two letters to the Chairman of the Doctoral Program in which he indicates dissatisfaction with the reasons and comments given to him by Dr. Martin and Dr. Littell.

8) On October 6, 2001, Plaintiff wrote a letter to Ruth W. Mayden, Dean of the Graduate School, stating that after he had failed the two courses, he reviewed his professors' comments indicating the reasons for the failures, but that he remained confused. Plaintiff indicates that his main question is "Does a student have a right to understand his or her mistakes in the Graduate School of Social Work and Social Research of Bryn Mawr College?"[4]

9) On November 1, 2001, Dean Mayden responded via letter her understanding that the professors gave Plaintiff full explanation.

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[4] Civil Action, super at Exhibit 3.

10) On December 11, 2001, Plaintiff again wrote Dean Mayden asking her to notify him about "the proper procedure to contest a professor's grade and the address and contact person for the Ethic Committee at Bryn Mawr.[5]

11) On January 30, 2002, Plaintiff wrote a letter to the President of Bryn Mawr College asking for an explanation solely for the purpose of understanding his mistakes.

12) On March 25, 2002, Nancy Vickers, President of Bryn Mawr College, wrote Plaintiff a letter, which states in pertinent part as follows I write in response to your letter of January 30. I have spoken with Dean Ruth Mayden about your concerns. I understand from her that while the faculty may not have been able to respond to your questions to your full satisfaction, they have offered serious and thoughtful answers. It is not always easy for a student to come to terms with the evaluations that faculty members make of his or her work. I think it can be healthy to seek an understanding of how one's work falls short of expectations, and how it can be improved, but it is also necessary at some point to move beyond a moment of failure and seek out or cultivate new opportunities." [6]

Notwithstanding this Court's suggestion that the Plaintiff seek the assistance of counsel,[7] Mr. Xi instead requested that the Court personally offer legal

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[5] Id, at Exhibit 5.
[6] Id, at Exhibit 6.
[7] Notes of Testimony, Status Conference Order, April 25, 2003, at 2-4.

assistance to him.[8] It is not the Court's obligation, however, to provide a pro se litigant with the law about what constitutes the proper pleading or valid causes of action in a lawsuit that be, himself has initiated. See, ie., First National Bank v. Vaughan, 19 Lack. 302 (1918) [A party" who takes advantage of his privilege of appearing in a suit without the aid of an attorney is not relieved from complying with the requirements of the system of practice inaugurated by statute."] Plaintiffs are bound by the facts as they have pleaded them within their Complaints. Nonetheless, we find that no configuration of the pleading facts above-cited will ever support a legally cognizable claim under any of the nine purported causes of actions in Plaintiff's Second Amended Complaint. See, ie Bechman v. Dunn and Trustees of University of Pennsylvania, 276 Pa, Super, 527, 417 A 2d. 583 (1980) [9]

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[8] One example is contained in Plaintiffs' New Response to Defendant's Motion for Protective Order pursuant to Pa. R.CP 4012, filed July 24, 2003, at New Matter, Number 13: As a layman, Plaintiff has tired [sic] his best to avoid any question that may be the conclusion of law, however, if the Court still finds one or two questions that may be relative to the conclusion of law, the Court can take one or two questions off the requests and leave the rest of them for Defendants to answer." A second example is found in Plaintiff's Response to Defendant's Motions for Judgment On the Pleading [sic], filed August 1, 2003, at Number 12: "Plaintiff does not know if serving the second Amended Complaint is still an original process. If yes, Plaintiff asks the Court's forgiveness for this mistake. With the Court's permission, Plaintiff is willing to re-serve the Second Amended Complaint to Defendants in accordance with Montgomery County Local Rule 401 (b) (1).*"

[9] the Beckman Court granted Defendants' Judgment On the Pleadings in the case wherein a university professor's letter to the University's ombudsman concerning a former student's failing grade on doctoral exam and her ultimate dismissal from the doctoral program were not able to support a claim for Libel because the letter was written in direct response to the former

Nor will the facts as pleaded permit the damage sought by Mr. Xi. Judgment on the Pleading will be granted and a Plaintiff's dismissed when the allegation failed to state a cause of action upon which any relief is able to be granted. Cassell v. Shellenberger. 356 Pa. Super. 10. 514 A. 2d. 163 (1986) appeal denied 515 Pa. 603, 529 A. 2d 1078 (1987). In Cassell, the pro se Plaintiff filed seventeen individual lawsuits arising from the same set of circumstances and requested monetary damages based on upon biblical statements.[10] "Additionally, appellant has not averred injuries for which a court of law is capable of providing relief. It is not the objectives of judicial tribunals to entertain grievances which are based on ecclesiastical or moral precepts. Thus, while we open our courts to those individuals capable of pleading specific legal injuries, we refuse to provide a public forum from others who seeks to air what are primarily personal adversities." Id., 514 A. 2d. at 165.

The "Wherefore" clause following each of the nine Counts in Plaintiff's Second Amended Complaint contain a combination of legal, equitable, punitive, and impossible, requests for relief including, but not limited to, the following:

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student's request that her case be reopened, and was also the product of the professor's subjective opinion that the evaluation of the former student's academic abilities was based upon her failure to demonstrate generalized knowledge of the substantive basis for her doctoral program due to the student's own inadequacies.

[10] For example: "Count 1-They hated me without a cause. Damages-$500,000. Count 4 - they bear false witness. Damages - $500,000. Count 5 – They have disobeyed their own law to malign my character. Damages – 1,000,000." Cassell, id. 514 A. 2d at 164.

Have the trial court investigate whether the decision made by Dr. Martin Dr. Littell, the Committee of the Doctoral Program, the School of Social Work and Social Research and Bryn Mawr College were biased, prejudicial, arbitrary, capricious, or contradictory.

If the Defendants cannot explain, or refuse to explain, any of their contradictory responses, the Defendants must be ordered to change the Plaintiff's grades from non-satisfactory or minimum pass to satisfactory.

The Defendants' explanations must be written.

The Plaintiff must be given the right to contest the Defendants' written explanations, and submit the contest to third-party arbitration.

Defendants shall be ordered to compensate the Plaintiff $300,000.00 (or $20,000.00 per year for fifteen years)

Plaintiff shall be allowed to return to study at Bryn Mawr, or any other universities which tuition paid by Bryn Mawr, at any time.

Cost and attorney fees

One million dollars in punitive damages for breach of an Implied Duty of Good Faith and Contract.

One million two hundred fifty thousand dollars in punitive damages for malicious and intentional harm.

Two million dollars in punitive damage for deceit and fraud.

Two millions five hundred thousand dollars in damage for civil conspiracy.
One Million dollars in punitive damage for intentional infliction of emotional distress.

As further explained below, this Court likewise concludes that Mr. Xi, Plaintiff herein has sought judicial intervention as a public forum in which to air his disappointment at failing in his educational pursuit as a doctoral student as Bryn Mawr College, a singularly personal adversity.

II. THE COURT WILL NOT INTERVENE IN MATTERS THAT ARE EXCLUSIVE ACADEMIC IN NATURE

The parties agree that operative law regarding judicial intervention in academic issues is Swartley v. Hoffner, 734 A. 2d. 915 (Pa. Super, 1999), appeal denied 561 Pa. 660, 747 a 2d. 902 (1999). Plaintiff actually cites Swartley at 142, 152, and 242 of his Second Amended Complaint in support of his allegations, and also cites Swartley in his Concise Statement at 2.i. and 2. K. In his Response to the Defendants' Motions for Judgment on the Pleadings, however, Mr. Xi contradicts his pleadings and states that neither the allegations he has raised nor the relief he has sought are academic in nature, We disagree.

The facts and issues in Swartley operative to the instant matter can be summarized as follows: Plaintiff Judith Swartley had timely completed all coursework required to receive a doctoral degree [Ph.D] in industrial engineering from Lehigh University in Pennsylvania. During the academic years, she also conducted research on her dissertation

topic, although her advisor and members of her dissertation committee objected to much of her work and the required statistical analysis and gave Swartley significant written criticism and suggestion.[11] Five years after the beginning of her coursework, and following two cancelled oral defense of her dissertation due to continued negative critiques from her advisors and committee, Swartley requested and was granted a leave of absence from the doctoral program due to her pregnancy. Ms. Swartley's dissertation defense ultimately occurred after almost nine years upon her return to the program at which time the five members committee voted 3-2 against granting her a Ph. D degree. Swartley sued Lehigh University and the three committee members who voted in favor of failing her on two bases: breach of contract for failing to educate her, and acting in an arbitrary and capricious manner. Following discovery, the trial court granted summary judgment in favor of the Defendant' .[12]

In analyzing previous caselaw and dicta, the Superior Court affirmed the trial court's decision by concluding that "[b]ased upon the prior statement of our Court, as well as the numerous learned decisions of other courts, we now hold that the relationship between a private educational institution and an enrolled student is contractual in nature; therefore, a student can bring a cause of action against said institution for a breach of contract where the institution ignores or violates portions of the written applying its holding to the claim asserted by Swartley, however, the Superior Court found that she had not established breach of contract, as a matter of law. "[Swartley brief fails to point to a single

[11] Swartley, id. 734. 2d. at 917
[12] id.

provision of the written contract between the university and its students that sets forth the obligations of members of a dissertation committee or otherwise links appellant's allegations to the contractual relationship between the university and its students." Id. The Court also found that "no reasonable jury could read the provisions of the university's contract with appellant to require that members of a dissertation committee vote to pass the student's written dissertation prior to scheduling an oral defense of that work." Id. 734 A. 2d at 920-921. Nor could Swartley indicate any contractual promise by the university that any doctoral student" be given an opportunity to revise and resubmit her dissertation." Id., 734 A 2d. at 921.

Regarding Swartley's second claim, the Court further found that the members of her dissertation committee who had voted against Swartley did not act in an arbitrary or capricious manner and "the decision to fail appellant after her oral defense was [neither] irrational [nor] motivated by bad faith or ill will unrelated to her academic performance. Instead, it is clear to this Court that the committee members made their decisions based on purely academic reasoning - –he kind that we find beyond our competence to question or challenge." Id., 734 A.2d at 922.

The Swartley decision is significant for its comprehensive and learned analysis of the law pertaining to the unique relationship between private academic institutions, disgruntle students, and the judiciary. The Court summarized its reasoning as follows:

> On the outset, we note that it is not the place of this Court to second-guess academic decisions and judgments made in colleges and universities of this Commonwealth. We are not now and will never be experts in each and every academic field open to scholarly pursuit. We are extremely cognizant that "[a]cademic freedom thrives not only on the independent and uninhibited exchange of ideas among teachers and students, but also, and somewhat inconsistently, on autonomous decisionmaking by the academy itself." Regents of the Univ. of Mich. V. Ewing, 474 U.S. 214, 226 n. 12, 106, S.Ct. 507, 88 L. Ed. 2d. 523 (1985) As a result, our Court abides by a general policy of nonintenvention in purely academic matters. See Shulman v. Franklin and Marshall College, 371 Pa. Super. 345, 358 A. 2d. 52 (1988) (en banc) (" a college is a unique institution which, to the degree possible, must be self-governing and the courts should not become involved in that process unless the process itself has been found to be biased, prejudicial or lacking in due process."). Swartley, id., 734 A 2d. at 921.

Although the Plaintiff's Second Amended Complaint alleges at Count IV "Breach of A [sic] Implied Duty of Good Faith and Contract,"[13] Mr. Xi has not pleaded any facts necessary to support a breach of contract claim that would be permissible pursuit to Swartley.

---

[13] Second Amended Complaint, filed February 25, 2003, at 10-11.

Nor has Plaintiff pleaded any facts at all to support his allegation that the Defendants acted in an arbitrary or capricious manner, notwithstanding his use of those terms within his Second Amended Complaint.[14] As the Swartley Court noted, "[w]hen presented with cases involving essentially academic decisions, such as the present case, our standard of review is well established. As the United States Supreme Court stated:

> When judges are asked to review the substance of a genuinely academic decision... they should show great respect for the faculty's professional judgment. Plainly, they may not override it unless it is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment. Ewing, 474 U.S. at 225, 106, S. Ct. 507 (citations and footnotes omitted.)
>
> "University faculties must have the widest range of discretion in making judgments as to the academic performance of students and their entitlement to promotion or graduation." Swartley, id., 734 A. 2d at 921 (citations omitted)

We understand that Mr. Xi does not agree with the explanations provided by his professors for his failing grades. He simply refused to accept two independent educators' appraisal of his work. This Court, however, is not equipped to "second-guess" those academicians because neither Research Methodology nor Program Evaluation are within our areas of expertise. We will not intervene in what is clearly a purely academic decision on the part of

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[14] Mr. Xi inserts the words "arbitrary" and "capricious" into Paragraphs 22, 49, 50, 99,106, 110, 191, 212, and 256, as well as the "wherefore" clause following Count I, II, and III.

Bryn Mawr professors. We note that Plaintiff's pleading lead us to the conclusion that no explanation will be sufficient enough to satisfy Mr. Xi – he simply does not believe that he deserved to fail his courses. This Court does not have the power to force the Plaintiff to understand his teachers' explanations. Nor are we able to force the Professors to re-explain in a different manner what they have already explained to Mr. Xi but which he continues to challenge.

For the reasons articulated above, this Court concludes that the Plaintiff's appeal should be dismissed and our order granting the Defendants' Motion for Judgment on the Pleadings be affirmed.

BY THE COURT

FURBER J.

Copies of the above Opinions sent on April 15th, 2004, to the following:
Haiying Xi, pro se
Joseph P. Trabucco, Esquire
John P. Meyers, Esquire

IN THE SUPREME COURT OF PENNSYLVANIA MIDDEL DISTRICT

Haiying Xi	:	No. 188 MAL 2005
Petitioner	:	
	:	Petition for Allowance of Appeal from the Order of The Superior Court
v.	:	

BRYN MAWR COLLEGE
JULIA H. LITTELL, :
CAROLYN NEEDLEMAN
JIM MARTIN, COMMITTEE
OF DOCTORAL PROGRAM,
GRADUATE SCHOOL OF
SOCIAL WORK AND SOCIAL
RESEARCH
Respondents :

ORDER

PER CURIAM

AND NOW, this 24th day of August, 2005, the Petition for Allowance of Appeal and the Petition for Allowance of Filing a Reply to Appellees' Reply are both DENIED.

Appendix E

TABLE OF EXHIBIT

1. Exhibit 1-A, Respondent Martin's first e-mail to Petitioner, dated Jun.7, 2001
2. Exhibit 1-B, Petitioner's e-mail to Respondent Martin, dated Jun.9, 2001.
3. Exhibit 1-B-attachment, Petitioner's questions for Respondent Martin to clarify, dated Jun 9,2001
4. Exhibit 1-C, Respondent. Martin's second e-mail to Petitioner, dated Jun. 13,2001
5. Exhibit 2-A, Petitioner's letter to the Committee of Doctoral Program, questions to Respondent. Martin, dated Aug. 11, 2001
6. Exhibit 2-B, Petitioner's letter to the Committee of Doctoral Program, questions to Respondent. Littell, dated Aug. 11, 2001
7. Exhibit 2-B-attachment- (a), Respondent Littell's comments on Petitioner's final paper
8. Exhibit 2-C, Petitioner's letter to the Committee of Doctoral Program, requesting for the missing paper from Respondent. Needleman, dated Aug.11, 2001
9. Exhibit 3- Petitioner's first letter to Dean Mayden, dated Oct. 6, 2001
10. Exhibit 4- Dean Mayden's letter to Petitioner, dated Nov. 1, 2001
11. Exhibit 5-Petitioner's second letter to Dean Mayden, dated Dec. 11, 2001
12. Exhibit 6-Petitioner's letter to President of the College, dated Jan. 30, 2002
13. Exhibit 7-President's letter to Petitioner, dated Mar. 25, 2002.

14. Exhibit 8-Student Handbook 2000-2001
15. Exhibit 9-Operating Procedure for the Degree of Doctor of Philosophy
16. Exhibit 11-Petitioner's performance reports in the past
17. Exhibit 12-The letter from Mr. Michael John who participated in Petitioner's pilot test
18. Exhibit 13- The letter from Mr. Leonard Sohn who participated in Petitioner's pilot test
19. Exhibit 14-The sample size from other survey

BEST AVAILABLE COPY

From : "James A. Martin" <jmartin@ellipsetel.com>
Reply-To : "James A. Martin" <jmartin@ellipsetel.com>
To : <yan_yao@hotmail.com>
Subject : Exam
Date : Thu, 7 Jun 2001 21:55:57 -0400
Attachment : FE_Allies.doc (40k)

I am sorry that you were not able to access your exam. Please be aware that it is the College's Policy that your need to maintain a Bryn Mawr e-mail account. This is how official communications are sent.

Here is the exam file (attachment).

I am away until the week of June 25th. Please contact me then if you would like to meet.

Jim

JAMES A. MARTIN, Ph.D., BCD
38 Canvasback Drive, North East, MD 21901
Phone: 410-287-9054, Fax: 410-287-3697
WebPage: http://www.brynmawr.edu/Acads/CGSW/jam/swith.
New Mental Health Web Page: http://serendip.brynmawr.edu/exc_cult/mentalhealth
Home E-mail: jmartin@ellipsetel.com
Bryn Mawr College E-mail: jmartin@brynmawr.edu

Notice: Attachments are automatically scanned for viruses using McAfee

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Exhibit 1- A

msn Hotmail yan_yao@hotmail.com

Passport Sign Out

Inbox Compose Address Book Folders Options Messenger Calendar Help

Compose [Directories | Greeting Cards | Gift Certificates]

To: jmartin@brynmawr.edu

Subject: Seek your instruction

Cc: Bcc:

Attachments: Clarification for Xi_Rsecond.doc; Xi_RsecondA_JAM [1].doc

☐ Save Outgoing Message ☐ Rich Text Format

Dear Dr Martin: 6/9/2001

Please see two attachments. Could you help me to understand what is the exact mistakes that I have commited and how can I correct these mistakes? If you review these two authors evaluation, how do you proceed? Thank you for your help. I want to leave this course with a clear understanding what mistakes I have made.

Sincerely
Haiying Xi

☐ Save Outgoing Message

Inbox Compose Address Book Folders Options Messenger Calendar Help

msn © 2001 Microsoft Corporation. All rights reserved. TERMS OF USE TRUSTe Approved Privacy Sta

Exhibit 1-B

Dear Dr. Martin:

This is the third evaluation from the second assignment. I have also attached my original paper with your comment and my explanation to this e-mail for your reference. I have a difficulty in following your comment. I will appreciate it if you can help me to identify what exact mistakes I made and how I can correct these mistakes.

To start with, I want to find if we can reach the same understanding regarding the following issues. If not, I need you to explain why my understanding is wrong so that I can correct my mistake.

1. Basically, Finn and Willoughby's research aims to evaluate the **employment outcome** of ex-offenders in a job- training program. Outcome is measured by ex-offenders' and others' job status at the termination of the program and 14 weeks after termination.
2. The outcome is measured through a comparison between the two groups: ex-offenders vs. other ten sub-groups as non-offenders.
3. Although there may be some overlapping categories as you pointed out, these two groups have different characteristics.
4. Finn and Willoughby don't give any employment outcome statistics of ex-offenders and other compared groups prior to the start of the job- training program.

Based on the above information, I made the following points:

1. Because of different characteristics between the two groups and lack of information on early employment statistics for both groups, the employment outcomes from the ex-offenders and the other ten sub-groups cannot be compared and the employment outcome for ex-offenders cannot be treated as the program outcome for ex-offenders no matter whether there is a difference or no difference. The reason is that we don't know whether the two outcomes are caused by the job- training program or by different characteristics between two groups.
2. In order to evaluate **this program outcome** for ex-offenders, we need to compare **this employment outcome** with some other employment outcomes from the groups of ex-offenders who either never participated in any job-training program or participated in some other programs.
3. In the current evaluation design, we may compare the outcomes between the two groups, however, we can not determine if the outcomes are caused by the program. If so, what is the purpose of this program evaluation?
4. Since we cannot determine whether the current employment outcome for ex-offenders is due to the program or due to the specific characteristics based on Finn and Willoughby's evaluation design, I conclude that they cannot use their current research design to evaluate the employment outcome for ex-offenders.

Exhibit 1-B attachment

Based on the above understanding, I suggest that the mistake may have been caused by a confusion of the evaluation goal in this case. Their design may be suitable for evaluating whether or not the job-training program has treated both groups equally. Of course, this is just a guess.

Your comments that I have difficulty in understanding are listed below:

1. In the third paragraph, "Measure as outcomes? If so, these outcomes seem pretty clear – just as specified above." When you say that outcomes seem pretty clear, you mean that the outcomes caused by the program are clear? If there is a difference or no difference in the outcomes of job status between the ex-offender group and the non-offender group, what is your conclusion respectively? My understanding is that even though Finn and Willoughby can measure the outcomes between the two groups, they are not able to determine if the outcomes are caused by the program or by the different characteristics between two groups. If so, based on what standard, these outcomes are clear?
2. In the third paragraph, "But what if they are trying to see if the program works as well for ex-offenders as it does for non-offenders?" My confusion is that under this case how you determine the program has worked well for non-offenders based on the information we have. Do we know the employment outcome for non-offenders prior to the program or do we not need to know of it before we make such a claim?
3. In the first paragraph, "Remember that there are various types of evaluations-some are not focused specifically on outcomes." My confusion is that do I need to list all types of evaluations even though I just evaluate the paper which focuses on the program outcome for a particular group?

I read all of your comments. The above three comments seem to relate to my misunderstanding and confusion regarding core evaluation issue because these three comments reverse my original understanding. The other comments seem to ask for further clarification. I add more explanations in my paper. Please let me know if these explanations can make myself clear. Also, if these explanations have more mistakes, please point them out.

Another issue for this paper is that by adding more explanations and samples, I am not able to finish your assignment within two pages as you regulate. This is also the big issue for my other courses.

The last question I want to find out about is that if I could address all the issues that you have made comments on before I submitted, could I pass this assignment or not? If not, what are the major problems? Can you specify them by giving examples in this assignment? Where are my mistakes? What are the right ways to correct the mistakes? I often feel that comments only point out problems but do not provide a way to correct the problems.

Thank you for your help.

Exhibit 1-B attachment

MSN Home | Hotmail | Web Search | Shopping | Money | People & Chat

msn

msn Make It Your Home.

Hotmail Home | Inbox | Compose | Address Book | Options | Help

yan_yao@hotmail.com

Save Address(es) | Block

Previous Next | Close

From : Jim Martin <jmartin@brynmawr.edu>
To : "yan yao" <yan_yao@hotmail.com>
Subject : Re: Seek your instruction
Date : Wed, 13 Jun 2001 08:22:30 -0400

Reply | Reply All | Forward | Delete | Put in Folder...

Printer Friendly Version

I am glad to review them - and would be happy to meet with you in person.

Unfortunately, because of my current summer schedule, I am available until after 23 July.

Please follow up with me that week or anytime in August.

Jim

At 09:34 PM 6/11/2001 -0400, you wrote:

> Dear Dr Martin:
> 6/9/2001
> Please see two attachments. Could you help me to understand what is the exact mistakes that I have committed and how can I correct these mistakes? If you review these two authors evaluation, how do you proceed? Thank you for your help. I want to learn this course with a clear understanding what mistakes I have made.
>
> Sincerely
> Ruiyun Xi

Get your FREE download of MSN Explorer at http://explorer.msn.com

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Academic Web Page:
http://www.brynmawr.edu/Acads/SSW/jam_pwith

Web Mental Health Web Page:
http://research.brynmawr.edu/mh/mentalhealth.

Home E-Mail: jmartin@...ntegral.com
Home Phone: 410-267-9054, Home Fax: 410-267-0867

Exhibit 1-C

Sincerely

Haiying Xi

The Committee of the Doctoral Program
Graduate School of Social Work and Social Research
Bryn Mawr College
300 Airdale Road
Bryn Mawr, PA 19010-1697

8/11/01

The Chairman of the Doctoral Program:

I would like to find my mistakes for my assignments and final test regarding Course 546, Evaluation. However, based on comments provided by Dr. Martin, I feel confused. I had expected that Dr. Martin's comments pointed out what points should be included and how these points should be organized when I answered his questions. Instead, I felt that most of his comments were arbitrary. They appeared as one pleases with no clear direction regarding how I could make an improvement.

For example, one of the final questions is to answer why Freeman and Rossi think that an evaluation is a political activity. I focused on Freeman and Rossi's point of view. However, Dr. Martin's last comment was "Are there other authors'information from our course readings who might add insight to this question/answer?" If this is a part of answer to the question, the question should be written as how other authors thought of an evaluation as a political activity, or as how Freeman and Rossi developed their ideas from other authors' writings. The original question didn't provide any clue that we should go thus far to answer it.

Another example is Question 5. Dr. Martin held that I made a number of assertions, not arguments that support the assertions. However, if Dr. Martin read more carefully, he might find that some arguments if not all for time length (1st why) and conditions (2nd why) were provided in the following paragraphs. Dr. Martin could keep asking "why" for every single sentence. However, at least for the first two why's, I don't know why he failed to find the answers even though the answers were not perfect.

Also, I feel that although Dr. Martin's question is "why random experiment is not proper in some situations," (I forget the exact question) actually what he really meant was "how evaluators reached the conclusion that random experiment was not proper in some situations." Many of his comments actually addressed the latter question rather than the former question. Many of my assertions that I copy from books answer the question of why but not of how. Of course, my answer missed some points.

Generally, I would like to see how Dr. Martin answers these three questions within one hour so that I can understand what is my mistake. I have studied in three graduate schools. In the first two schools, students usually receive a model paper or a instruction that includes all the points students should cover in their final test from professors as references.

Exhibit 2-A

I also e-mail Dr, Martin one of my assignments with his comments because I felt that some of his comments contradicted what he taught in the class. I am waiting for his response.

I wish that Dr. Martin not only pointed out what were wrong in my assignments and the final test but also why they were wrong and what were right. Otherwise, I really wasted an entire year in Bryn Mawr.

Sincerely

Haiying Xi

Haiying Xi

The Chairman
The Committee of the Doctoral Program
Graduate School of Social Work and Social Research
Bryn Mawr College
300 Airdale Road
Bryn Mawr, PA 19010-1697

8/11/2001

The Chairman of the Doctoral Program:

I would like to request a thorough explanation for the following questions regarding my final grade for Course 552. These questions arose when I read Dr. Littell's comments in an effort to understand my mistakes. Instead, I felt confused either because of Dr. Littell's inconsistence between her former comments and her final comments or because of her contradictions with some other scholars' writings. The questions are listed below:

I. The term paper

My final score is unsatisfactory. Dr. Littell's comment: "A correlational design with untested measures aimed at testing hypotheses in a medium sized sample (N=150) is not appropriate. Construct validity & measurement properties have not been established."

My questions are:

1. Correlational design

a. The paper has been submitted twice. Although Dr. Littell claims that she has given me much feedback for my paper, "a correlational design" has never been raised as one of her concerns among her feedback. Dr. Littell's comments will be provided upon request. Please explain why all of a sudden, the correlation becomes one of the key reasons that contribute to the failure of the final paper in her opinion.

b. My hypothesis is that income level may affect an individual's risk-taking behavior in their first investment decisions. This hypothesis is developed through my literature review. Please see the section of literature review in my paper. Since many scholars have claimed that to some degree, "initial wealth" influences people's gambling and investment behaviors, are all these research designs correlational?

c. Even though it is a correlational design, why is it wrong? Kazdin (19xx) wrote, "Research in clinical psychology often focuses on identifying correlates among variables." (P.66). Based on this sentence, there is nothing wrong with researching a correlational relationship—Why does Dr. Littell think that it is wrong to study or to identify whether or not there is a correlational relation between income and risk behavior? Based on what, Dr. Littell holds that a correlation design is not proper?

Exhibit 2-B

d. If Dr. Littell found a new study indicating that the relationship between income and risk-taking behavior is correlational rather than causal, please provide the source of finding and the time when she found such research.

e. I remember very clearly that when I first met with Dr. Littell to discuss her comments on my draft, she emphasized that my topic was too wide and she provided several options. One of these options was that I should focus on the income level based on my interest. This was also a key issue when she requested me to address how the relationship between the income level and risk behavior has any reference to the social work field. I made a lot of changes based on her instructions. Now, I feel it difficult to understand if Dr. Littell thought the correlation was a major problem, why didn't she address this issue with me? Please explain.

2. Untested measures

I have reviewed many books to find if there are current instruments available to measure investors' behaviors. I couldn't find any, which means that I have to develop my own. Then, I made some reference to past research in order to develop my own instrument. In my paper, I have stated that my instrument carries a tentative nature, is limited, and cannot be used before being tested. After reading Dr. Littell's comment, I tried to correct my mistake. However, once again, I find that Dr Littell's comment is ambiguous with no clear direction. My questions are:

a. Does Dr Littell mean that I should not propose an untested instrument? If so, am I right in assuming that all the current instruments in use including Dr. Littell's own instrument example which she presented in the class had been tested before they were proposed?

b. In research procedure, first, a researcher has an idea. Second, the researcher finds a method to test the idea. Third, the researcher tries to find if the method of testing is valid and reliable. It is true that my paper only presents my idea and proposes an instrument to test it. The next step is to test whether or not the instrument is valid and reliable, which I have mentioned in my paper. Does Dr. Littell want my paper to focus on designing the test of the instrument without even proposing and presenting my idea and the method of testing the idea first? I remember very clearly that a test design for the instrument was one of Dr. Littell's several recommendations. I also need to address the reference of the test design to social work if I select this option. I felt it difficult because Dr. Littell kept requesting the reference of my research topic to social work. I followed Dr. Littell's second option in order to establish this reference. If other options were not acceptable without an instrument that she accepted, why didn't she even mention other options? Please explain what Dr Littell really wants to see.

c. Had the instrument in the model paper provided by Dr. Littell been tested before the author presented it? If yes, in which section in the paper did the

author discuss the result of his test? If not, why doesn't his instrument need to be tested?

d. Dr. Littell did point out that some questions needed to be rewritten. I made corrections based on her instruction. (Her original comment will be provided upon request.) However, it is also the first time Dr. Littell cites "untested" as one of the major reasons not to pass this paper.

3. Sample size

a. Here, Dr. Littell's comment is also very ambiguous. Sample size becomes a problem because a medium sample size cannot be used in a correctional design? Or the sample size needs to be increased or decreased? Please explain.

b. Rubin, A and Barbbie, E (1997) wrote, "to conduct a multiple regression analysis of ten variables, [we] might choose a sample size of 100 because a common statistical rule of thumb requirement for multiple regression analysis is to have at least ten cases for each variable." (P.250). I chose the sample size based on a number of variables. Please provide an explanation and citations why my sample size is not proper.

c. Please explain what sample size is proper for this study and why.

4. The last question

I wonder if it is possible for the committee to send my paper with Dr. Littell's instructions and comment to another university? I may have failed to follow Dr. Littell's instructions, as Dr. Littell claims. I'd like to receive some feedback from a third party to see if I fail to follow her instruction.

II. The final test

Question 1. How do scholars select an appropriate sampling strategy?

My final score is unsatisfactory. The reason cited is: "Too many mistakes, e.g. (1) equalize qualitative research with non-probability sampling. (They often go together, but there is no reason they have to coexist.); (2) dependent variable in descriptive studies; (3) large sample to prevent harmful effect; (4) rationale for disproportionate sampling, (5) selection of stratification variable; (6) cluster sampling & homogeneity; and (7) definition of quota sampling.

The mistake I recognize is (2) dependent variable in descriptive studies. However, I am not able to recognize the other six mistakes.

(1) Equalize qualitative research with non-probability sampling. [one] of too many mistakes.

Exhibit 2-B

a. I wrote: "For example, if the nature of study is to explore people's subjective understanding, we may use qualitative study. In this case, we will choose non-probability sampling method."

b. Dr. Littell's comment: "One doesn't have to use non probability samples in qualitative studies." Further, Dr. Littell claimed, "[I] equalize qualitative research with non-probability sampling. They often go together, but there is no reason they have to coexist."

c. Fortune and Reid (1998) wrote, "Qualitative research favors the use of relatively small, non-probability samples, intensively studied. **Qualitative researchers use all types of non-probability samples."** (P.350) Both authors didn't mention other sampling methods at all in this section.
Padgett (1998) wrote, "**Qualitative sampling involves much smaller numbers (even N=1) and nonprobability techniques (e.g., purposive, convenience, and snowball sampling)**." (P. 50)
Cited from McCall and Simons (1969), Rubin, A and Babbie, E (1997) wrote, "**three types of nonprobability sampling methods that are specially appropriate to field research**." (P. 38)

d. My questions:

- Does Dr. Littell think that Fortune, Reid, Padgett and Rubin and Babbie equalize qualitative research with non-probability sampling? If yes, what is my mistake? If not, why did the school and Dr. Littell select these books as our textbooks when they knew that they were wrong?
- From our readings, Tashakkori and Teddlie (1998) are the two authors who did mention an example of probability sampling in qualitative research (Miles and Huberman 1994), however, they do not mention whether it is traditional / pure qualitative research or a mixed research. It may be subject to debate regarding how they categorize it.
- If Dr. Littell only accepts a particular point of view from certain researchers, she should claim it in advance.
- I didn't remember Dr. Littell had lectured how a qualitative study using probability sampling. If I am wrong, please correct me by providing information in which class she lectured this issue. If I am right, please explain why it suddenly becomes a requirement?

(3). Large sample to prevent harmful effect

a. I wrote, " We need to think about what sampling error... we can tolerate for the study. This situation is even more important if a research has a harmful by-effect. In this situation, we need a large sample size to detect and to prevent the harmful outcome. As a rule, a large sample size brings a relatively small sampling error."

b. Dr. Littell's comment, "Large sample size won't prevent harmful outcome."

Exhibit 2-B

c. In this case, Dr. Littell and I have different emphases. My answer emphasizes the purpose of using a large sample and Dr. Littell focuses on the effect. The following example may provide an explanation.

In rain, we use umbrellas to keep from getting wet. If the prevention of getting wet is not our purpose, why do we use umbrellas? Here, using umbrellas is a means. However, it doesn't mean that this means can provide a guarantee that we will not get wet. It only provides a certain level of protection.

The same reason applies to the prevention of a harmful outcome. A large sample size can help us to detect a harmful outcome to certain subpopulation more than a small sample size does. However, application of this means doesn't mean that we can eliminate a harmful outcome. My following sentence, " As a rule, a large sample size brings a relatively small sampling error" expresses why a large sample may detect and prevent a harmful result. Also, ask a pharmaceutical company why it has to use a very large sample in developing a new medicine and listen to its response.

Also, Bichman (1998) points out "A sample designed without taking the subpopulation into account can yield too few of the subpopulation members in the sample. **Increasing the overall sample size ... are potential remedies.**" (p.118) Although what Bichman focuses on is inclusion of subpopulation, it also applies to prevention of harmful result. Here, the key point is the purpose rather than effect. Otherwise, it can always be argued that a large sample will not be potential remedies if the sample selection is biased no matter how large the sample size is.

(4). Rationale for disproportionate sampling

a. I wrote, "[when selecting sampling methods,]... Within random sampling, the next thing we ask can we have a full list of sample? If yes, we may use simple random sampling, or systematical sampling. If no, we have to use cluster. Then, we ask if the subpopulation needs to be included and in what percentage? Based on the answer, we decide if we need to use stratified sampling or not."

b. Dr. Littell added "disproportionate" in the front of "stratified sampling or not." Although Dr. Littell's addition made the sentence clearer, I don't know where my mistake is. Please explain.

(5). Selection of stratification variable

a. I wrote, "Stratified sampling is very useful if we want to include a disproportionate group, for example, a minority, into our sample. To use stratified sampling, the researcher can do in two ways. In the first way, the researcher groups every element based on homogeneity into different groups, then to pick up sample from each group based on their percentage in the population..."

b. Dr. Littell's comment, "homo/heterogeneous on what characteristics? How are stratification variables selected?" "[One] of too many mistakes."

c. Rubin, A. and Barbbie, E. (1997) wrote, "[In stratified sampling], you ensure that appropriate numbers of elements are drawn from **homogeneous subset** of that population." (P.255)
"The ultimate function of stratification, then, is to organize the population into **homogeneous subsets (with heterogeneity between subsets)** and to select the appropriate number of numbers of elements from each. To the extent that the subsets are homogeneous on the stratification variables, they may be homogeneous on other variables as well." (P.256)

d. My question: From my example, it should not be difficult to find that the race is the characteristic in different groups for this example even I didn't write it out. Dr. Littell thought that I made a mistake in selecting a stratification variable because I didn't write a 'characteristic'. Please read what Rubin and Barbbie wrote. Does Dr. Littell think that they don't know characteristics? Also, I would like to point out that Dr. Littell's comment is not appropriate because she doesn't write that we decide homo/heterogeneous not based on any characteristic but on the characteristic of interest we studying. For example, if we research how religious beliefs influence children's education, the stratification variable may not be gender but church membership, even though both membership and gender are "characteristics." Will Dr. Littell think it fair that I conclude that she doesn't know that the research interest determines the characteristic because she doesn't write it out?

(6). Systematic sampling

a. I wrote" To use systematic sampling, the researcher needs to be careful about periodicity bias. It means that in some situations ... the researcher may systematically omit an element because of its position. For the case of hotel rooms, if we pick every 5th room on each floor as our sample, we may always omit 11th room if each floor has 11 rooms.

b. " Dr. Littell' s comment " A clustered sampling strategy "

c. " Rubin, A. and Barbbie, E. (1997) wrote, "There is one danger involved in systematic sampling. The arrangement of element in the list can make systematic sampling unwise. Such an arrangement is usually called periodicity... If the list of elements is arranged in a cyclical pattern that coincides with the sampling interval, a grossly biased sample may be drawn... As another example, suppose we select a sample of apartment in an apartment building. If the sample is drawn from a list of apartments arranged in numerical order, there is a danger of the sampling interval coinciding with the number of apartments on a floor or same multiple thereof." (P. 255)

d. " If Dr. Littell doesn't think that I am wrong, I have no comment.

(7). Cluster sampling and homogeneity, [one] of too many mistakes.

a. I first wrote" We use cluster method when we can't exhaust the list of the study population, for example church members. However, people living in one cluster normally share a great level of homogeneity. Based on this nature, we list the clusters and randomly select the cluster as our first level of sample. Then, we list every members in the cluster and randomly select those members as our sample."

Later, when I explain how two sampling methods may be combined, I wrote, "For example, if we study a city population, we don't have a list of city population. But we know that people live in different neighborhoods and people living in the same share the same characteristics. With this knowledge, we can first use a cluster method."

b. Dr. Littell made two comments, first "not always?!" for my answer "we know that people live in the different neighborhood and people living in the same share the same characteristics." Second, "Cluster sampling is not based on the premise that clusters are homogeneous."

c. Regarding "not always?!", Rubin, A and Babbie, E (1997) wrote, "With a given total sample size, however, if the number of clusters is increased, the number of elements within a cluster must be decreased. In this respect, the representativeness of the clusters is increased at the expense of more poorly representing the elements composing each cluster, or vice versa. Fortunately, the factor of homogeneity can be used to ease this dilemma. Typically, the

elements composing a given natural cluster within a population are more homogeneous than are all elements composing the total population. The number of a given church are more alike than are all church members, **the residents of a given city block are more alike than are all the residents of a whole city**. As a result, relatively fewer elements may be needed to adequately represent a given natural cluster... **The general guideline for cluster design**, then, is to maximize the number of clusters selected while decreasing the number of elements within each cluster." (P.260)

d. My comment: Based on Rubin and Barbbie, I am afraid that "not always" block should not be the subject when I discuss cluster sampling. Also, if I say that summer is hot and winter is cold, it does not mean that every day in winter or every winter season is always cold and every day in summer or every summer season is always hot. (Of course, we need to define what is cold and hot first.) However, if Dr. Littell wants to understand it this way, I cannot argue with her.

e. Regarding "Cluster sampling is not based on the premise that cluster are homogenous," I really don't know how Dr. Littell derives her conclusion from my writing. Please explain in which sentence, I write the cluster is homogenous.

(7). Definition of quota sampling, one of toc many mistakes.

I wrote, " Quota sample is the one we can use to predict certain result. Researchers choose sample based on an established general sample criteria..." Dr. Littell highlighted this sentence and made a comment, "This is not accurate."

Quota sample has many kinds of explanations in different books. The one I picked was from one of the books I read because I felt it easy to be remembered. However I forget the name of the book. Therefore, I will not argue it.

Also, Fortune and Reid (1994) wrote, [to choose quota sample,] "one divides the population into segments or strata based on the selected characteristics, then, sample from each stratum." (P.212) I wonder if we replace Fortune and Reid's "selected characteristics" with sample criteria, will the meaning of their sentence is changed. I understand that I may need to write more. But how writing less becomes a mistake? Please explain.

The Last Comment

I remember very clearly that Dr. Littell said in the last review class, she did not expect that we would write our answers very accurately and perfectly for

our final examination. She just wants to find out whether or not we understand the basic principles we have learned. Please confirm with the other class members. However, from her comments, I think that she is doing exactly the opposite. That's fine. The problem is that she should know the point of view or writings of what she and other professors assign us to read first, telling us what point of view from which book she will accept as a correct answer in advance.

Question 2

I lost my answer book when I traveled. Therefore, I am not going to contest the result.

Sincerely

Haiying Xi

Haiying Xi

Reference:

Bichman, L.E. and Rog, D. T. (1998). Handbook of Applied Social Research Methods. Thousand Oaks, CA Sage.

Fortune, A. E. and Reid, W. J. (1998). Research in Social Work. New York : New York, Columbia University Press.

Kazdin, A. E. (19xx). Research Design in Clinical Psychology. Third Edition. Boston: MA., Allyn and Bacon.

Padgett, D. K. (1998). Qualitative Methods in Social Work Research: Challenges and Rewards. Thousand Oaks: CA, SAGE Publications, Inc.

Rubin, A. and Barbbie, E. (1997). Research Methods for Social Work. Brooks/Cole Publishing Company. Third edition.

Tashakkori, A and Teddlie, C. (1998). Mixed Methodology Combining Qualitative and Quantitative Approaches. Thousand Oaks: CA SAGE Publications. P. 74

Exhibit 2-B

My telephone is 215-222-5463. If you have any concern or if you want to check whether or not I destroy the information leading to your identity after I finish my research, you can reach me by calling this number.

Once again, thank you for your support for my study. If you would like to participate, please confirm your consent by signing two copies of this letter. You should keep one copy and return another copy to me

Sincerely

Haiying Xi

I have read this letter carefully and I agree to participate.

Name (print) _____

Signature _____

Date _____

a correlational design with control measures aimed at testing hypotheses in a medium-sized Sample (N=150) is not appropriate. measurement properties have not been established.

(1)

Exhibit 2 –B attachment

Chairman
The Committee of the Doctoral Program
The Graduate School of Social Work and Social Research
Bryn Mawr College
300 Airdale Road
Bryn Mawr, PA 19010-1697

8/11/2001

The Chairman of the Doctoral Program:

I tried to find what my mistake was in my final paper for Course 549. However, as of today, I haven't received my original paper back yet. I checked my mailbox several times and I didn't find it. Please let me know how I could receive my final paper?

Sincerely,

Haiying Xi

Exhibit 2-C

BEST AVAILABLE COPY

Ruth W. Mayden, Dean
Office of the Dean
Graduate School of
Social Work and Social Research
Bryn Mawr College
300 Airdale Road
Bryn Mawr, PA 19010-1697
610-520-2603
Fax 610-520-2613
www.brynmawr.edu/socialwork

10/6/01

Dear Dr. Mayden:

My name is Haiying Xi. I was a student in the Ph.D program in 2001. I am no longer a student this year because I failed Course 552, Research Methodology, taught by Dr. Julia Littell, and Course 546, Evaluation, taught by Dr. Jim Martin.

After I failed both courses, I tried to understand what mistakes I made. I read the books and reviewed the two professors' comments indicating the reason why I failed. Instead of finding and understanding my mistakes, I feel extremely confused because the discrepancies between what Dr. Littell commented on my test and what is written in the textbooks, as well as the contradiction between what Dr. Martin taught in the class and what he wrote in his comment for my assignment.

However, I was still afraid that I might ignore or misunderstand the two professors' major points. I e-mailed my questions along with Dr.Martin's comments to Dr. Martin in June. He responded that he would give me an answer in late July or August. I didn't receive any answer. On 8/12/2001, I sent certified mail to the Committee of Doctoral Program (Please see the copy of certified mail). The mail contains three letters (see Copies attached):

1. For Course 552, I listed what I wrote, what Dr. Littell wrote and what the textbooks say. In general, my question was what I should follow.
2. For Course 546, I repeated my questions that I e-mailed to Dr. Martin and asked if Dr. Martin could send me a correct answer to his final test so that I could understand my mistakes.
3. For Course 549, I requested the copy of my final paper since I never received it. (Even now I am not able to raise any question!)

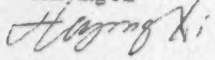
Two months have passed since I sent the mail and I haven't received any response. Now my question is, "Does a student have right to understand his or her mistakes in the Graduate School of Social Work and Social Research of Bryn Mawr College?" A student must ask no reason if a professor already determines that this student is wrong? If it is Bryn Mawr's policy, please forgive my sending this letter to you. Otherwise, I still want to understand what my mistakes were from the two professors and I request the copy of my final paper for Course 549.

Exhibit 3

Thank you for your attention on this matter.

Sincerely,

Haiying Xi



Cc. President, Bryn Mawr College

Exhibit 3

Office of the Dean
Graduate School of
Social Work and Social Research
300 Airdale Rd
Bryn Mawr, PA 19010-1697
610 520-2603
Fax 610 520-2613
www.brynmawr.edu/socialwork/

BRYN MAWR

November 1, 2001

Haiying Xi
213 45th Street
Philadelphia, PA 19104

Dear Haiying Xi,

I apologize for delaying in responding to your October 6 letter. I did pass your earlier communication on but think that because of timing (your letter arrived in August when faculty are not here) and the beginning of the fall term, your inquiries did not receive prompt attention.

To answer your specific question, you have the right to an explanation about the reasons for any grades you receive from a member of our faculty. I understand that you have received full explanations from Dr. Martin and Dr. Littell.

The successful doctoral student demonstrates the capacity for independent, critical thought. Papers, class participation and final examinations serve as vehicles for demonstrating that capacity.

I think these expectations have been discussed with you and hope that you now are able to move forward.

I wish you well.

Sincerely,

Ruth W. Mayden
Dean

cc: C. Bisman

RWM:vg

Exhibit 4

12/11/2001

Dr. Ruth W. Mayden, Dean
Graduate School of
Social Work and Social Research
Office of the Dean
Bryn Mawr College
300 Airdale Road
Bryn Mawr, PA 19010-1697

Dear Dr. Mayden:

Thank you for your letter dated 11/1/2001. In your letter, you stated that as a student of Bryn Mawr, I am entitled to receive an explanation for the grades given by a professor. It was your understanding that Dr. Littell and Dr. Martin had explained the matter to me. I am writing to state that, although I have requested twice in the past, I have never received an explanation for my final paper and test grades from Dr. Littell and Dr. Martin

Enclosed, please find an E-mail sent by Dr. Martin on June 13. As you can read, Dr, Martin clearly stated that he was not available until after July 23. This is the last message that I ever received from Dr. Martin. As to Dr. Littell, she never responded to my request. Since this is the third time since August that I have written about this matter, I'm sure you can understand my serious concern. I have enclosed my questions to Dr Littell and to Dr. Martin and the E-mail correspondence between Dr. Martin and me again in this letter for your review. Also, I have never received the copy of my final paper from Dr. Needleman. As a result, I don't know if she made any comment.

I would certainly appreciate your assistance; also, please notify me of the proper procedure to contest a professor's grade and the address and contact person for the Ethic Committee at Bryn Mawr

Thank you for your help.

Sincerely

Haiying Xi

Haiying Xi

Exhibit 5

President
Bryn Mawr College
101 N. Merion Avenue
Bryn Mawr, PA 19010
610-526-5000

1/30/02

Dear President:

My name is Haiying Xi. I used to be a graduate student in the School of Social Work and Social Research in 2000. I am no longer a student there because I failed my final tests and some assignments. After I failed the classes, I tried to understand my mistakes. I wrote my questions for Dr. Martin and Dr. Littell in a letter-dated 8/11/2001 to the Committee of the Doctoral Program of the School of Social Work. I also notified the Committee that I didn't receive the copy of my final paper from Dr. Neddleman. The questions were also e-mailed to Dr. Martin on 6/11/2001. Regardless of my effort, I got no explanations.

One month later, I wrote my second letter to Dr. Mayden, the Dean of the School. Dr. Mayden responded to me in a letter dated November 1, 2001. In her letter, Professor Mayden wrote, "I understand that you have received full explanations from Dr. Martin and Dr. Littell." Dr. Mayden didn't mention my final paper for Dr. Neddleman, which was missing. Please see the copy attached. Immediately after I received her letter, I wrote Dr. Mayden another letter. I told her that I hadn't received any explanation. Since then, I have not yet heard anything from Dr. Mayden.

Since the Dean of the Graduate School of Social Work and Social Research insisted that I had received full explanations and I don't know what the explanations are, could you help me find out the following information?

1. When did Dr Martin and Dr. Littell explain my mistakes in my final tests and assignments to me?
2. How did Dr. Martin and Dr. Littell explain to me, orally or in writing?
3. Where did their explanations take place?
4. What are their explanations?
5. Where is the copy of my final paper for Dr. Needleman?

For your reference, I am enclosing copies of my prior correspondence with this letter. Please be advised that it is not my purpose to embarrass anyone. I am trying to understand my mistakes. It is disappointing to me that I am compelled to ask you for an explanation which I have already requested from Dr. Mayden, Dr. Martin, Dr. Littell and Dr. Needleman.. I look forward to hearing from you soon.

My address is: 213 S. 45th St. Philadelphia, PA 19104.

Sincerely,
Haiying Xi

Exhibit 6

Office of the President
Bryn Mawr College
101 North Merion Avenue
Bryn Mawr, PA 19010-2899
610 526-5136
610 526-7450 Fax

BRYN MAWR

March 25, 2002

Dear Haiying Xi,

I write in response to your letter of January 30. I have spoken with Dean Ruth Mayden about your concerns. I understand from her that while the faculty may not have been able to respond to your questions to your full satisfaction, they have offered serious and thoughtful answers. It is not always easy for a student to come to terms with the evaluations that faculty members make of his or her work. I think it can be healthy to seek an understanding of how one's work falls short of expectations, and how it can be improved, but it is also necessary at some point to move beyond a moment of failure and seek out or cultivate new opportunities.

Sincerely,

Nancy Vickers

Nancy Vickers
President

Haiying Xi
213 S. 45th St
Philadelphia, PA 19104

Exhibit 7

BRYN MAWR COLLEGE
THE GRADUATE SCHOOL OF SOCIAL WORK AND SOCIAL RESEARCH

STUDENT HANDBOOK

2000-2001

Exhibit 8

SCHOOL POLICY ON OBSERVATION OF RELIGIOUS HOLIDAYS

Occasionally, students in the Graduate School of Social Work and Social Research miss class in order to observe religious holidays not recognized in our present College calendar. The following accommodations should be made whenever possible, either singly or in combination, depending on student needs and circumstances:

1. In the case of a multi-section course, arrangements may be made for the student(s) to attend a section that meets on a different day.
2. If taping is an accepted practice in a given class, arrangements may be made for another student to tape the class for the absent student(s) and/or share class notes.
3. Faculty may photocopy and share instructional notes with absent student(s).
4. Faculty may meet with the absent student(s) at an agreed-upon date and time to discuss material presented during the missed class.
5. If a large number of students in a class will be absent in order to observe a specific religious holiday, and if the instructor and all class members come to a consensus about rescheduling, the class may be rescheduled.

These accommodations are not to be considered requirements, and faculty and students are encouraged to consider alternative accommodations as appropriate.

Students are responsible for communicating with their instructors in a timely manner about any upcoming absence related to religious holiday observance. Faculty are responsible for discussing possible accommodations with students who plan to miss class in order to observe religious holidays, and for helping them develop a plan that fits the situation.

EVALUATING STUDENT PERFORMANCE: GRADING AND MUTUAL ACCOUNTABILITY

Preparation for professional social work practice requires the student to read widely, think critically and analytically, engage in reasoned debate and produce independent and collaborative work.

To meet these requirements, the student must be present for class and ready to participate fully in the full range of educational opportunities.

Students are expected to complete all assigned readings for the week in advance of class meetings. Students are expected to attend all class sessions and submit written assignments on time. The instructor should be notified in advance if the student expects to miss a class meeting or assignment due date.

Each instructor will determine specific expectations regarding class attendance, participation and satisfactory completion of assignments for his or her course.

While the School does not have a formal honor code system, in-class or take-home exams are given with the expectation that the work submitted will be the student's own. If instructions for assignments and/or tests are unclear, please ask the instructor for clarification. Students and faculty are expected to comply with the NASW Code of Ethics.

Since the 1970's the School has operated from the principle that members of the faculty and students are accountable to each other on an equitable basis. Procedures to implement this

Exhibit 8

principle were developed through the joint effort of the faculty and of the Student Association. Mutual accountability is seen as an important part of the student's professional development–learning how to formulate critical assessments that provide constructive feedback which notes strengths and areas for improvement.

It is the instructor's responsibility to provide the Master's student with an evaluative grade of Satisfactory or Unsatisfactory for the course or seminar on the provided Grade Sheet. The Ph.D. student receives an evaluative grade of Satisfactory, Marginal Satisfactory, or Unsatisfactory. A quantitative and qualitative analysis of achievement of learning objectives, oral and written presentations, examinations, and other educational outcome measures is also required. In addition, the instructor may choose to provide a written analysis of the student's performance as a private communication between the instructor and the student. The policy of the School is to terminate any Ph.D. student who receives:

- two Unsatisfactory assessments;
- three Marginal Satisfactory assessments; or
- one Unsatisfactory and two Marginal Satisfactory assessments.

The student's responsibility is (a) to participate in either an oral or written mid-term analysis of the quality of the course or seminar, and (b) to prepare and sign as a communication to the instructor and to the Dean an end-of-semester evaluation of faculty performance. The student's evaluation of the instructor is not made available to the latter until the instructor's evaluation of the student has been turned into the Dean's Office. These student evaluations are essential contributions to the development of the School, particularly with regard to questions of faculty reappointment, promotion, and tenure.

Students in field placements will also complete an evaluation of their field instructor at the end of each semester. This completed evaluation will be shared with the field instructor after the field instructor has submitted his or her evaluation of the student.

See Appendix for sample evaluation forms.

INCOMPLETES

The grade Incomplete is given only when extenuating circumstances prevent the student from completing the requirements of the course on time and must be accompanied by a date on which the work will be completed. M.S.S. students must complete the first semester's work by the third Monday in January, and the second semester's work by the last Monday in May. Second year students are expected to meet the deadlines set for graduation. M.S.S. students must complete their summer course work by August 31. Dual degree and post-masters students must complete their M.L.S.P. summer session course work by July 1. Work that is not completed by the due date becomes a permanent incomplete and will be indicated on your transcript as such. Students who do not meet the specified dates may be required to meet with the Committee on the Evaluation of the Education Performance of Master's Students, or other relevant committees for review of student performance, after the faculty member has designated the grade as Unsatisfactory or Permanent Incomplete or has granted a further extension.

For Doctoral students, the grade of Incomplete is reserved for use only in respect to illness or a grave emergency situation. A student requesting an Incomplete for a course must submit a written petition to the instructor by the last day of class for that semester. The instructor must approve this request in writing for it to take effect. For the Incomplete to be translated into a Satisfactory or Unsatisfactory grade, the instructor must report the grade of Incomplete to the faculty on the Doctoral Committee, present a recommendation with supporting rationale, and receive approval by the majority of members for the request to change the grade. (On the grade sheet, the instructor indicates the date by which the work is to be completed. In any case, however, there will be no extension beyond six weeks after the beginning of the academic year following that in which the work was due.)

LEAVES AND WITHDRAWAL

A student whose academic work is in good standing may apply to the Dean for a leave of absence after consulting with his or her advisor. Generally a leave is requested for no more than one academic year. If the student wishes to return to the program at the end of that year, he or she should write to the Dean requesting reinstatement. Available space in the program and length of time the student has been away from the School will be factors affecting reinstatement. A student extending a leave beyond the approved period may need to reapply for admission to the School.

The student may, on the recommendation of a physician, request a medical leave of absence for reasons of health at any time. Readmission may be granted upon recommendation of the Dean based upon evidence required by the School of the student's capacity to meet the demands of his or her program.

A student who has withdrawn from the School is not automatically readmitted. After a year's absence he or she may request readmission and should consult the Dean and the Director of Admissions for advice.

Students who withdraw or take a leave of absence before the end of the enrollment period must contact the Associate Comptroller (610-526-5265) for an exit interview before departure from the program to be sure that his or her financial account is settled. The student also must meet with the Associate Dean of the Graduate School of Social Work and Social Research to discuss his or her experiences at the School.

GRIEVANCE PROCEDURE

A student who believes that she/he has been treated unfairly has the right to be heard. The Graduate School of Social Work and Social Research has in place both policies and procedures for students to follow. With the exception of appealing decisions of the Committee on the Evaluation of Master's Students and decisions of the doctoral faculty, the following procedure is to be used by all students.

The appeal procedures for the Committee on the Evaluation of Master's Student's are listed below. The appeal process for the doctoral program is listed in the PhD Operating Procedures Manual.

In all instances, the student should first discuss the issue directly with the individual involved, whether that individual is a student, member of the faculty, field instruction liaison, staff or field instructor.

If the issue is not resolved at that level, the student should consult:

- -her/his advisor when the matter involves a fellow student, member of the faculty, or staff member
- -her/his field instruction liaison when the matter involves a field instructor
- -the Director of Field Instruction when the matter involves a field instruction liaison

If the issue is not resolved at that level, the student should consult:

- -the Associate Dean when the matter involves a fellow student, member of the faculty, field instructor, field instruction liaison or staff member.

Exhibit 8

BRYN MAWR COLLEGE

GRADUATE SCHOOL OF SOCIAL WORK AND SOCIAL RESEARCH

OPERATING PROCEDURES

FOR THE

DEGREE OF DOCTOR OF PHILOSOPHY

This edition is as of December 1999,

and supersedes all earlier editions.

Exhibit 9

at the University of Pennsylvania. The Reciprocal Agreement does not extend to courses in the professional schools, including the University of Pennsylvania School of Social Work, or to summer courses. Students seeking to take courses at the University of Pennsylvania should follow these rules:

a) The permission of the Doctoral Faculty is required for courses submitted to fill required courses at Bryn Mawr. No permission is required for electives, providing they are doctoral level seminars.

b) Students enrolling in courses outside the School must be in good standing.

7 Transfer of Credit

Students who have completed doctoral level work in another program may petition the Doctoral Faculty to transfer credits after successfully completing a minimum of three courses in the Ph.D. program here. Petition for transfer of credits should be made in writing to the Doctoral Faculty through the Director of the Program. The petition should include the institution and department where the course was taken, the date when the course was taken, a description of the course including, a copy of the course outline, and a copy of the transcript demonstrating a grade of B or higher in all courses considered for transfer. In order for a course to be substituted for a required course, equivalent content must be demonstrated. The Doctoral Director will review prospective transfer credits with the student. If transfer of credit is approved, the Director of the Program will complete the Transfer Credit Form and submit it to the Dean's Office. Eight courses must be taken at Bryn Mawr College.

D. APPRAISAL OF ACADEMIC PERFORMANCE

1. Appraisal of Academic Performance of Student

a) At the end of each semester the instructor completes the "Evaluation of Student's Performance in a Ph.D. Course" form for each enrolled student. A grade of Satisfactory, Marginal Satisfactory, or Unsatisfactory i[illegible]

b) At the end of each semester, ea[illegible]dent's performance is reviewed by the Doctoral Faculty. The Director of the Doctoral Program writes a letter to each student enrolled in course work summarizing the faculty's assessment of his or her performance.

c) A copy of the "Evaluation of Student's Performance in a Ph.D. Course" form for each course is given to the student.

d) The grade of Incomplete is reserved for serious illness or an emergency situation. A student must submit a written petition to the instructor by the last day of class for that semester. The

Exhibit 9

instructor must approve this request in writing for it to take effect. Special exceptions for granting an Incomplete may be recognized by the instructor. All Incompletes must be completed within 30 days of the first class day in the following academic year. Any Incompletes remaining after this date become permanent Incompletes and no degree credit is received for those courses. A course instructor may be called upon to justify to the Doctoral Faculty approval for an Incomplete.

e) Course work will be critiqued by the instructor and returned promptly.

2. Appraisal of Academic Performance of Faculty

a) A mid-semester course evaluation by students is required. It may be oral or written, group or individual, as instructor and students wish. These analyses are used by the instructor to help improve the course.

b) At the end of each semester, each student is expected to provide written qualifying comments and a grade of Satisfactory or Unsatisfactory for the instructor's performance in each course. This information is used by the faculty and the administration in considerations of tenure, promotion, merit increases, professional reviews and course assignments.

3. Evaluation of Student Performance

a) Students are expected to maintain a level of course work equal to a grade of B or better, that is, in the two highest categories of performance on the criteria for evaluation (see Appendix V).

b) Either "Marginal Satisfactory" performance in course work or "Unsatisfactory" performance in one course will lead to a Doctoral Faculty discussion of the appropriateness of that student's continuation in the program.

c) The policy of the School is to terminate any student who receives:

i) 2 "Unsatisfactory" assessments; or

ii) 3 "Marginal Satisfactory" assessments; or

iii) 1 "Unsatisfactory" and 2 "Marginal Satisfactory" assessments.

d) Decisions on student continuation in the program are made by the Doctoral Faculty as a whole.

e) At the end of each semester, the Doctoral Faculty meets to consider the performance of every registered student. At this time, decisions to terminate students will be made, if appropriate.

f) If a decision has been made to terminate a student, the student receives official notification of this decision from the Dean.

APPEALS PROCEDURE

A student who wishes to appeal any decision regarding his/her status in the program shall submit such a written appeal to the Dean who shall bring the case to the faculty of the doctoral program for final resolution.

GOVERNANCE OF THE DOCTORAL PROGRAM

I. PREAMBLE

The following are the procedures and rules governing the doctoral program at Bryn Mawr. They represent those procedures required by the General Faculty, those procedures agreed upon and voted by the Doctoral Faculty, and those ways of doing things which are in common usage at Bryn Mawr and constitute the customary way of functioning at this institution.

The doctoral program in social work is a program leading to a degree awarded by the General Faculty of the College. As such, the doctoral program is ultimately accountable to the General Faculty through the Committee to Supervise the Ph.D. of the General Faculty.[1] The General Faculty sets specific degree requirements for the Ph.D. degree as well as certain rules regarding how such requirements are to be met. The rules of the General Faculty and the by-laws provide further requirements for faculty functioning in this division of the College.

Under the Plan of Government of Bryn Mawr College, certain responsibilities are delegated to the faculty. The following functions are specified for the faculty:

> "The Faculty of Social Work and Social Research shall have authority over all matters pertaining to admission, curriculum, and instruction (including attendance, examination, and recommendations of candidates for degrees in the Graduate School of Social Work and Social Research), subject to the provisions of Article IV, Section 2.c." (Source: Article VI, section 2.a.)
>
> "The Faculty of Social Work and Social Research shall have the authority to award scholarships and fellowships, to the extent authorized for the School of Social Work and Social Research by the Board of Trustees." (Source: Article VI, section 2.c.)

Within the School of Social Work, the doctoral program is a relatively autonomous program with its own governing body, the Doctoral Faculty. "The Faculty of Social Work and Social Research shall have

---

[1] Plan for the Academic Government and By-laws and Rules of the College. Rules of the General Faculty Governing the Degree of Doctor of Philosophy.

Exhibit 9

names of faculty members who will comprise the Supervising Committee. The Doctoral Faculty shall review at this time the appropriateness of the faculty members and confirm or suggest alternation of the Supervising Committee. The candidacy application and names of faculty members of the Supervising Committee are forwarded to the Committee to Supervise the Ph.D. of the General Faculty for its approval and appointment of the outside Chair. After candidacy, the Supervising Committee reports to the Committee to Supervise the Ph.D.

Structure of the Doctoral Program

The Doctoral Faculty shall construct such committees as are necessary for the conduct of its business, as outlined in the Doctoral Program Operating Procedures.

Director of the Doctoral Program: The Director of the Doctoral Program carries responsibilities in three areas:

(1) to provide leadership for the doctoral program:

- facilitate the development and articulation of a vision for the program
- facilitate the identification of strengths and weaknesses of the program
- monitor the enforcement of academic standards at all stages of doctoral education from admissions to completion of the final oral examination

(2) to administer the program on a day-to-day basis:

- ensure the smooth functioning of every aspect of doctoral education in social work at Bryn Mawr College

(3) to represent the doctoral program:

- participate in such organizations as the Group for the Advancement of Doctoral Education (GADE).

Chair of the Doctoral Committee: As Chair of the Doctoral Committee, the Director will, among other things, facilitate faculty engagement with governance of the Doctoral Program by setting meetings, developing the agenda, and implementing decisions of the Doctoral Faculty.

Job Description of Director of the Doctoral Program

Chair of the Doctoral Committee

1. The Chair of the Doctoral Committee will chair all meetings of the Doctoral Faculty and facilitate meetings of Doctoral students.
   a) The Chair is responsible for sending out notices of meetings to all members.

Exhibit 9

b) The Chair prepares the agenda for Doctoral Faculty meetings in consultation with the Dean, and other faculty members and for student meetings in consultation with students.

2. The Chair of the Doctoral Committee will hold meetings of the Doctoral Faculty to evaluate student performance at the end of each semester. Meetings of the Doctoral Faculty will be called periodically to admit students to candidacy. At meetings of the Doctoral Faculty approximate to the preliminary examinations, the Chairman will arrange the selection of a committee to prepare the preliminary examinations.

3. The Chair will convene the Doctoral Faculty, at the request of a Supervising Committee, for consultation.

Director of the Doctoral Program

1. The Director of the Doctoral Program is responsible for general administration of the Doctoral Program. This includes:

   a) Maintaining communication with doctoral students regarding the operation of the program including: notifications regarding candidacy applications, filing of financial aid applications, scheduling of preliminary examinations, and special opportunities for funding or employment.

   b) Providing general oversight to insure the smooth operation of the program in such matters as admissions and preparation of preliminary examinations, in accordance with established policy.

   c) Preparing in consultation with the Dean the proposed list of classes to be offered, for approval of the Doctoral Faculty.

   d) Matching of courses to faculty strengths -- course assignments should reflect the Doctoral Faculty's judgment about the most qualified person to teach each course.

   e) Communicating student concerns about the program to appropriate parties.

   f) Insuring the maintenance of a file of open positions and work/funding opportunities for doctoral students.

   g) Planning for the orientation of new students.

2. The Director of the Doctoral Program has responsibility for initiating and directing attention to curriculum and program development in the Doctoral Program.

3. The Director is responsible for identification of policy issues in the Doctoral Program and arrangement for their clarification by the Doctoral Committee and the Doctoral Faculty.

Exhibit 9

4. The Director of the Doctoral Program has responsibility for engaging the Resources Office, the Dean and the faculty in the provision of adequate financial resources for the program.
5. The Director of the Doctoral Program shall arrange with the Dean for appropriate advertisement of the Doctoral Program.
6. The Director of the Doctoral Program convenes the Financial Awards Committee to allocate funds.
7. The Director of the Doctoral Program is a member of the Doctoral Admissions Committee, along with such other faculty as the Doctoral Faculty may elect. The Director assumes responsibility for administering all aspects of the doctoral admissions process, including:
   a) working with Admissions Secretary to schedule interviews with applicants;
   b) arranging an "open house" for prospective doctoral program applicants, usually at the end of the fall semester.
   c) developing, with the Admissions Committee and the Doctoral Faculty, plans for advertising the program.
8. The Director of the Doctoral Program serves as the School's representative on the Committee to Supervise the Ph.D. of the General Faculty.
9. The Director of the Doctoral Program represents the doctoral program at meetings of GADE (Group for the Advancement of Doctoral Education), and responds to requests for information regarding our program from sources other than doctoral applicants, i.e., other doctoral programs, GADE, foundations, etc.
10. The Director of the Doctoral Program is responsible for communicating with individual students regarding strengths, weaknesses and difficulties associated with their overall performance while the student is in class work.
11. The Director of the Doctoral Program is responsible for the preparation and revision of the Ph.D. Prospectus.

Exhibit 9

GRADUATE SCHOOL OF SOCIAL WORK AND SOCIAL RESEARCH

EVALUATION OF STUDENT'S FIELD PERFORMANCE

Student's Name: [redacted] Instructor: Sally C. Russell
Student's ID: 0[redacted]269 Signature: Sally C. Russell
Course and Section SOWK 764 014 Date: May 5, 1999
Title: Field Instruction IV
Semester, Year: Spring, 1999 Return to Dean's Office by: May 7, 1999

✓ Satisfactory
___ Unsatisfactory
___ Incomplete - to be completed by: _____

CRITERIA	ASSESSMENT (CIRCLE ONE AND COMMENT) 5 4 3 2 1				
Use of Field Instructor	*Excellent* (5)	*Very Good*	*Good*	*Adequate*	*Unsatisfactory*
Very trusting relationship! Mr. Xi has been an exceptionally valuable and collaborative member of the					
Mastery of Learning Objectives and Practice Skills	*Excellent*	*Very Good* (4)	*Good*	*Adequate*	*Unsatisfactory*
Quite notable growth in understanding his role and skills as a social w[illegible]					
Ability to Manage Administrative Responsibilities	*Excellent* (5)	*Very Good* (4)	*Good*	*Adequate*	*Unsatisfactory*
Tackled all tasks with commitment and diligence and timeliness. He is exceptionally well organized					
Level of Professional Identity	*Excellent* (5)	*Very Good*	*Good*	*Adequate*	*Unsatisfactory*
Very enthusiastic and committed to social work ideals					
Ability to Respond to Issues of Diversity in Agency and Broader Community	*Excellent*	*Very Good* (4)	*Good*	*Adequate*	*Unsatisfactory*
worked hard to comprehend and respond to differences of all kinds					

Comments and Areas for Improvement:

Very good job here. You were very respected by your agency for your attitude, hard work, and your kind and lively presence in the agency community.

Exhibit 11

BRYN MAWR COLLEGE
GRADUATE SCHOOL OF SOCIAL WORK AND SOCIAL RESEARCH

EVALUATION OF STUDENT'S PERFORMANCE
IN A MASTER'S COURSE

MAY 24 1999

Student's Name: Haiying, Xi
Student's ID: 0843869
Course and Section: SOWK 328 001
Title: Clinical Social Work Practice with Chidlren and Adolescents of Color
Semester, Year: Spring, 1999

Instructor: Janet Shapiro
Signature: J Shapiro
Date: 05.11.1999

Return to Dean's Office by May 7, 1999

✓ Satisfactory
___ Unsatisfactory
___ Incomplete - to be completed by: _____

CRITERIA	ASSESSMENT (CIRCLE ONE AND COMMENT)				
	5	4	3	2	1
Mastery of Learning Objectives	(Excellent)	Very Good	Good	Adequate	Unsatisfactory
Ability to Engage Material	(Excellent)	Very Good	Good	Adequate	Unsatisfactory
Articulation and Organization in Written Work	Excellent	(Very Good)	Good	Adequate	Unsatisfactory
Articulation and Focus in Oral Expression	Excellent	(Very Good)	Good	Adequate	Unsatisfactory
Capacity for Abstract Thought	(Excellent)	Very Good	Good	Adequate	Unsatisfactory

Mastery of Learning Objectives
The student adequately mastered the objectives of this course. This was clear in both his written work and through his participation in classroom discussion.

Ability to Engage Material
The student is well able to engage this material in a reflective way. He brings multiple perspectives to his work which is helpful in his ability to work with the material.

Articulation and Organization in Written Work
The student's written work is clearly articulated and well organized. There are continuing grammatical issues involved, but I expect these to continue to improve.

Articulation and Focus in Oral Expression
The student's participation in class continued to increase over the course of the semester. His comments were well focused and supportive of ongoing dialogue in the classroom.

Capacity for Abstract Thought
The student has a developed capacity for abstraction. He can be open to new material and is able to contemplate multiple perspectives.

BRYN MAWR COLLEGE
GRADUATE SCHOOL OF SOCIAL WORK AND SOCIAL RESEARCH

EVALUATION OF STUDENT'S PERFORMANCE
IN A PH.D. COURSE

MAY 14 1999

Student's Name:	Xi, Haiying	Instructor:	Thomas P. Vartanian
Student's ID:	0843869	Signature:	
Course and Section	SOWK 541 001	Date:	May 11, 1999
Title:	Data Analysis II		
Semester, Year:	Spring, 1999	Return to Dean's Office by:	May 7, 1999

__X__ Satisfactory (S)
____ Marginal Satisfactory (MS)
____ Unsatisfactory (U)
____ Incomplete – to be completed by: _____

PERFORMANCE CRITERIA	ASSESSMENT (Circle one for each and provide comments)			
1. Knowledge of Material	Excellent	Good	Fair	Poor
2. Skill in Organizing Material	Excellent	Good	Fair	Poor
3. Abstraction and Argumentation	Excellent	Good	Fair	Poor
4. Written Expression	Excellent	Good	Fair	Poor
5. Oral Expression	Excellent	Good	Fair	Poor

Comments:

Haiying did good to very good work in this class. His overall test average was 84.5%. He did quite well on the computer projects for the class and wrote a good paper for the class. Haiying shows very good abilities in working with data and using statistical analyses. He works very hard in the class, and in his paper, he tried many different ways of examining the relationships between his variables. While not all of it was done correctly, his overall understanding of the concepts taught in the class was very good. I enjoyed having Haiying in the class.

Exhibit 11

Haiying,

This is excellent, but for some lapses in word use and a few disjointed passages in writing as well as an insufficient attention to how discourse is even autonomous from the power block in Foucault's mind. But for the bit about the dominant social group and the writing lapses this is a very good presentation of Foucault's thinking! Well done!

Exhibit 11

Course: SW 531 Social Theory
Professor: Sanford F. Schram
Student: Haiying XI
Assignment: Term Paper
Due: 12/20/2000

Liberation without Destination:
Michel Foucault's Genealogy

****

Breaking from Scientific Tradition

Michel Foucault was one of several French leading social theorists who started a new theoretical framework that we call Post-structuralism today. Post-structuralism emerged as a revolt against Structuralism, which was considered to be the mainstream social theory in France at the time. Structuralism believed that human society was organized and operate by an underlining structure. Post-structuralism challenged this belief. During his lifetime, Michel Foucalt wrote many books that covered fields such as mental health (Madness in Western History, the Birth of Clinic), prison system (Discipline and Punish), and human sexuality (The History of Sexuality). In his books, Michel Foucault studied the development of knowledge in the ~~West~~ world. His research questioned the fundamental principles and beliefs that had sustained the development of science and knowledge since the Enlightenment, marking a breaking away point from tradition.

In sum, Michel Foucault challenged traditional science in three aspects. First, he asked if there was an objective social reality. Second, he asked about the nature and

VERIFICATION

To the Court:

My name is John Michel I am one of Mr. Haiying Xi's co-workers. I verify under the oath that in early 2001, Mr. Haiying Xi distributed a survey instrument to me. The survey instrument was designed by Mr. Haiying Xi to conduct a pilot test for one of his Ph.D programs in Bryn Mawr College. I fulfilled the survey instrument and returned it to Mr. Haiying Xi. After I returned the survey instrument to Mr. Xi, he also asked if I felt it difficult to understand the survey questions. We went over several questions and we reached the same understanding. I didn't have any difficulty to understand his survey questions.

I swear that the above information is true and correct to the best of my knowledge. If the court has any question regarding the above information, please contact me at (phone) 215-683-4262

Witness Name (print) _____

Signature John Michel Date 4/27/04

Exhibit 12

VERIFICATION

To the Court:

My name is Leonard Sohn I am one of Mr. Haiying Xi's co-workers. I verify under the oath that in early 2001, Mr. Haiying Xi distributed a survey instrument to me. The survey instrument was designed by Mr. Haiying Xi to conduct a pilot test for one of his Ph.D programs in Bryn Mawr College. I fulfilled the survey instrument and returned it to Mr. Haiying Xi.

I swear that the above information is true and correct to the best of my knowledge. If the court has any question regarding the above information, please contact me at (phone) 215 677 9706

Witness Name (print) LEONARD SOHN

Signature Leonard Sohn Date 4/28/04

Exhibit 13

BEST AVAILABLE COPY

" Sample size less than 150 "

www.usatoday.com
FINAL SPORTS
THE NATION'S NEWSPAPER
USA TODAY
NO. 1 IN THE USA
Tuesday, May 18, 2004

Altercation: Kevin Garnett, left, was fined

Kings' Peeler must sit

Suspended by NBA for two games, including Wednesday's, after elbowing T'Wolves Garnett ■ 1C

Study: Low-carb not a slimmer diet

But research finds other advantages

By Nanci Hellmich
USA TODAY

In the largest study of its kind, researchers have found that dieters on low-carbohydrate plans don't lose more weight over the long term than traditional dieters.

But there's good news for carb-counters: They get greater improvement in their levels of triglycerides, blood fats linked to coronary disease. That is important because nutritionists have raised concern for years over low-carb diets' high intake of saturated animal fat and its potential impact on the heart.

Millions are on Atkins and similar diets that push beef, fish, chicken, pork, cheese and high-fat salad dressings but slash carbohydrates including sweets, potatoes, bread and pasta; starchy vegetables and many fruits.

Researchers at the Veterans Affairs Medical Center in Philadelphia followed 132 obese adults for a year. Half were told to try to eat less than 30 grams of carbs a day. The others were told to follow a more conventional plan, cutting 500 calories a day and limiting fat to 30% of calories.

Findings in today's *Annals of Internal Medicine*:

- At six months, the low-carb group had lost an average of 13 pounds; the conventional dieters lost about 4 pounds.
- After a year, the low-carb group was down an average of 11 pounds. The other group continued to lose and was down an average of 8 pounds. The difference was not statistically significant.
- The low-carb group had a decrease in triglycerides, and diabetics in the group had better control of their blood sugar.
- Both diet groups had fairly high dropout rates. Almost a third of the dieters quit.

"Cutting back on carbohydrates for most Americans means getting rid of junk food like french fries, sodas, doughnuts," says Linda Stern, the study's lead author.

A second study, conducted at Duke University, also found that low-carb dieters had better improvements in triglycerides and "good" cholesterol. Duke tracked 120 overweight people for six months. Low-carb dieters lost an average of 26 pounds, compared with 14 for traditional dieters.

The Duke study, also published in the medical journal, was funded by the Atkins Foundation.

Low-carb dieters
U.S. households

No low-carb dieters 83%

Household member on low-carb diet 17%

tional calling rates ever.

Sample size (Many examples not attached)

Exhibit 14

(3)

FILED
MAR 8 - 2006
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 05-1048

IN THE

Supreme Court of the United States

HAIYING XI,

Petitioner,

v.

BRYN MAWR COLLEGE, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PENNSYLVANIA

BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Did the Pennsylvania appellate courts properly affirm the trial court's grant of judgment on the pleadings?

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Regents of the University of Michigan v. Ewing, 474 U.S. 214, 106 S. Ct. 507 (1985) 9, 12, 13

STATEMENT OF THE CASE

Petitioner Haiying Xi was enrolled as a Ph.D. candidate in the Graduate School of Social Work and Social Research at Bryn Mawr College in the 2000 – 2001 academic year. Among other courses in which he was enrolled, Petitioner was taking a course in Research Methodology with Respondent Professor Julia Littell and a course in Evaluation with Respondent Professor James Martin. Petitioner failed both of these courses and Petitioner was dismissed from the program.

On September 12, 2002, Petitioner filed his original Complaint, alleging entitlement to damages for negligence, deception and cover-up. An Amended Complaint was filed on December 30, 2002 (markedly increasing the size and scope of the Complaint, raising seven counts instead of three, and doing so through 241 numbered paragraphs, where the Original Complaint had included only 35 numbered paragraphs). On February 25, 2003 Petitioner filed his Second Amended Complaint (expanding from seven to nine counts and from 241 to 317 numbered paragraphs). Respondents' Answer and New Matter were filed on March 25, 2003.

In spite of the expansion of allegations throughout the pleading process, as well as the voluminous discovery requests and motion more fully described in the Trial Court Opinion at page 3, footnote 1 (*See* "Appendix D" attached to Petitioner's Petition), the essence of Petitioner's complaint remained constant. Petitioner sought further explanations from his former professors about his failing grades and about why his answers and submitted work were not acceptable (as well as an evaluation by the Trial Court of those explanations). He sought a further explanation from the

Graduate School and the College regarding his inquiries and his belief that neither the Graduate School nor the College were sufficiently responsive to his inquiries and complaints. Specifically, Petitioner alleged an entitlement to monetary damages for Wrongful Termination from the graduate program, Failure in Administration or Dereliction of Duty, Abuse of Due Process, Breach of Implied Duty of Good Faith and Contract, Reckless Indifference, Malicious and Intentional Harm, Deceit or Fraud, Civil Conspiracy and Intentional Infliction of Emotional Distress. Petitioner also alleged entitlement to reinstatement to the graduate program and entitlement to punitive damages.

The Trial Court, in its Opinion (*See* "Appendix D" attached to Petitioner's Petition), identified the operative pleadings upon which it made its determination as follows:

- Petitioner's Second Amended Complaint filed February 25, 2003;

- Respondents' Answer and Affirmative Defenses filed on March 25, 2003;

- Petitioner's Reply to Respondents' Affirmative Defenses and New Matter filed June 30, 2003; and

- Respondents' Answer to Petitioner's New Matter filed July 2, 2003.

Additionally, the Court relied on the attachments to Petitioner's original Complaint, as Petitioner referenced said exhibits in his Second Amended Complaint.

As the Trial Court set forth in pages 5 and 6 of its Opinion (*See* "Appendix D" to Petitioner's Petition), the operative pleadings reveal the following:

- Petitioner attended the Bryn Mawr College Graduate School of Social Work and Social Research from September 2000 through June 2001.

- Petitioner failed two courses and was dismissed from the doctoral program in August 2001.

- Petitioner did not have a Bryn Mawr College e-mail account, in contravention of College Policy which required such an account to give and receive official communications, and thus was not able to access his Program Evaluation final exam.

- Dr. Martin sent Petitioner a copy of his exam on June 7, 2001, in response to Petitioner's personal, unofficial, non-College e-mail account.

- On June 9, 2001, Petitioner sent Dr. Martin another e-mail from his personal account, asking the professor to help him understand the nature of his mistakes.

- On June 13, 2001, Dr. Martin responded by e-mail indicating his willingness to review the errors and/or meet with Petitioner personally at some time in the future.

- On August 11, 2001, Petitioner wrote two letters to the Chairman of the Doctoral Program in which he indicates dissatisfaction with the reasons and comments given to him by Dr. Martin and Dr. Littell.

- On October 6, 2001, Petitioner wrote a letter to Ruth W. Mayden, Dean of the Graduate School, stating that after he had failed the two courses, he reviewed his professors' comments indicating the reasons for the failures, but that he remained confused. Petitioner indicates that his main question is: "Does a student have a right to understand his or her mistakes in the Graduate School of Social Work and Social Research at Bryn Mawr College?"

- On November 1, 2001, Dean Mayden responded via letter to Petitioner her understanding that the professors gave Petitioner full explanations.

- On December 11, 2001, Petitioner again wrote to Dean Mayden asking her to notify him about "the proper procedure to contest a professor's grade and the address and contact person for the Ethic Committee at Bryn Mawr."

- On January 30, 2002, Petitioner wrote a letter to the President of Bryn Mawr College asking for an explanation solely for the purpose of understanding his mistakes.

- On March 25, 2002, Nancy Vickers, President of Bryn Mawr College, wrote Petitioner a letter in which she stated, in pertinent part: "I write in response to your letter of January 30. I have spoken with Dean Ruth Mayden about your concerns. I understand from her that while the faculty may not have been able to respond to your questions to your full satisfaction, they have offered serious and thoughtful answers. It is not always easy for a student to come to terms

> with the evaluations that faculty members make of his or her work. I think it can be healthy to seek an understanding of how one's work falls short of expectations, and how it can be improved, but it is also necessary at some point to move beyond a moment of failure and seek out or cultivate new opportunities."

See the Trial Court Opinion, "Appendix D" to Petitioner's Petition at pp. 5, 6.

Further, as set forth on pages 7 and 8 of the Trial Court Opinion (*See* "Appendix D" to Petitioner's Petition), the "Wherefore" clauses following each of the nine Counts in Petitioners' Second Amended Complaint contain "a combination of legal, equitable, punitive, and impossible, requests for relief" including, but not limited to, the following:

- Have the trial court investigate whether the decisions made by Dr. Martin, Dr. Littell, the Committee of the Doctoral Program, the School of Social Work and Social Research, and Bryn Mawr College were biased, prejudicial, arbitrary, capricious, or contradictory.

- If the Respondents cannot explain, or refuse to explain, any of their contradictory responses, the Respondents must be ordered to change the Petitioner's grades from non-satisfactory, or minimum pass, to satisfactory.

- The Respondents' explanations must be written.

- The Petitioner must be given the right to contest the Respondents' written explanations, and then submit the contest to third-party arbitration.

- Respondents shall be ordered to compensate the Petitioner $300,000.00 (or $20,000.00 per year for fifteen years).

- Petitioner shall be allowed to return to study at Bryn Mawr, or any other university with tuition paid by Bryn Mawr, at any time.

- Costs and attorneys fees.

- One Million Dollars in punitive damages for Breach of an Implied Duty of Good Faith and Contract.

- One Million Two Hundred-Fifty Thousand Dollars in punitive damages for Reckless Indifference.

- One Million Five Hundred Thousand Dollars in punitive damages for Malicious and Intentional Harm.

- Two Million Dollars in punitive damages for Deceit or Fraud.

- Two Million Five Hundred Thousand Dollars in punitive damages for Civil Conspiracy.

- One Million Dollars in punitive damages for Intentional Infliction of Emotional Distress.

REASONS FOR DENYING THE PETITION

Petitioner fails to provide any compelling reasons for this Honorable Court to grant the writ of certiorari. The Pennsylvania Supreme Court's decision represents a proper application of well-settled law.

I. Judgment On The Pleadings Was Properly Granted As The Respondents Were Entitled To Have The Case Dismissed As A Matter Of Law

A. The Trial Court Properly Declined to Intervene in Matters That Are Exclusively Academic in Nature

There is a long tradition of deference accorded to academic institutions when the courts are asked to examine academic or disciplinary decisions. Particularly concerning academic decisions regarding grading or the satisfaction of academic requirements, the courts will generally defer to the institution unless the decision was irrational or motivated by bad faith.

In *Board of Curators of the University of Missouri v. Horowitz*, 435 U.S. 78, 92 (1978), the United States Supreme Court stated "[c]ourts are particularly ill-equipped to evaluate academic performance. . . . [and this and other factors] warn against any such judicial intrusion into academic decision making." The Petitioner in that matter alleged violations of due process under the Civil Rights Act and the Fourteenth Amendment. The record was replete with indications that Petitioner had notice of her precarious academic status but she alleged that she had not been afforded a hearing in which to present her case against dismissal. The United States Supreme Court held that, *where the dismissal was for*

academic deficiencies, due process does not necessitate a hearing before the school's "decision-making body." *Id.* at 90 (emphasis supplied). In terms of substantive due process, the Court stated, without holding, that those questions would be reviewed under a standard for arbitrariness and capriciousness. *Id.* at 91-92.

Also instructive is the holding of the Third Circuit Court of Appeals in *Hankins v. Temple University (Health Sciences Center)*, 829 F.2d 437 (3d Cir. 1987). There, the Court addressed the allegations of a black female physician who had been dismissed from a fellowship program at the university hospital; the university based its decision on her deficient clinical skills, excessive absenteeism and, on one occasion, her abandonment of her patient. The doctor brought suit for race and gender discrimination and for violation of due process. As to the due process issue, the court stated that university faculties "must have the widest discretion in making judgments as to the academic performance of their students." *Id.* at 443. Moreover, in determining what process was due, if any, the court held that "when a student is discharged for academic reasons, an informal faculty evaluation is all that is required." *Id.* at 445.

In Pennsylvania, the leading case with respect to academic decision making is *Swartley v. Hoffner and Lehigh University*, 734 A.2d 915 (Pa. Super. 1999). The Pennsylvania Superior Court stated:

> On the outset, we note that it is not the place of this Court to second-guess academic decisions and judgments made in colleges and universities of this Commonwealth. We are not now and will never be experts in each and every academic field

> open to scholarly pursuit. We are extremely cognizant that "[a]cademic freedom thrives not only on independent and uninhibited exchange of ideas among teachers and students, but also, and somewhat inconsistently, on autonomous decision-making by the academy itself." *Regents of the Univ. of Mich. v. Ewing*, 474 U.S. 214, 226 n.12, 88 L. Ed. 2d 523, 106 S. Ct. 507 (1985). As a result, our Court abides by a general policy of nonintervention in purely academic matters. *See*, *Schulman v. Franklin and Marshall College*, 538 A.2d 49, 52 (Pa. Super. 1988) (*en banc*) ("A college is a unique institution which, to the degree possible, must be self-governing and the courts should not become involved in that process unless the process itself has been found to be biased, prejudicial or lacking in due process.").

Swartley, at 921.

Swartley involved a candidate for a Ph.D. in industrial engineering who was dismissed from the program after she had spent seven years on her doctoral dissertation. She brought suit for breach of contract in failing to educate her and alleged that the university acted in an arbitrary and capricious manner. As to her allegations of arbitrary and capricious acts, the Court held that it was against the general policy of the Commonwealth to second-guess academic decisions. In any review they could only determine if there was a rational basis for the academic decision:

> Having reviewed the evidence in the light most favorable to the non-moving party, we cannot find that the decision to fail appellant after her oral defense was either irrational or motivated by

> bad faith or ill will unrelated to her academic performance. Instead, it is clear to this Court that the committee members made their decisions based on purely academic reasoning – the kind that we find beyond our competence to question or challenge.

Id., at 921. Similar decisions were reached in *Eter v. College Misericordia*, 28 Pa.D.&C.3d 402 (Luzerne Cty. 1982) and in *Subbiondo v. Temple University*, 21 Pa.D.&C.3d 689 (Phila. Cty. 1981).

The material facts in this case are not in dispute: Petitioner Xi sought a judicial inquiry into matters involving academic decision-making and academic processes. Petitioner sought, in essence, an Order from the Trial Court directing the College to provide Petitioner with an explanation of the comments on written product that had already been determined to be insufficient to justify Petitioner's continued enrollment in the graduate program, and for an Order changing his grade to a passing grade. Petitioner's Second Amended Complaint, therefore, sought judicial intervention into purely academic decision-making. The Trial Court was correct to follow the general policy of this Commonwealth and decline to intervene in purely academic matters.

In order for the Trial Court, or this Honorable Court, to evaluate Petitioner's claims, it would be necessary for the Court to explore the nature of graduate studies in Social Research. As can be seen in the documents attached to Petitioner's Original Complaint, and referenced in the Second Amended Complaint, this would require an understanding of "correlational design," "sample sizes" and "multiple regression analyses," among other specialized and esoteric concepts. In order to pursue his cause of action, Petitioner would have the Trial Court explore these

concepts, delve into the rationale of the professors and examine the policies and grading procedures of the graduate program and the College. In order to address his claims that the grading process was arbitrary it would be necessary not only to understand the subject matter and course materials, but also to compare the substance of what Petitioner wrote to that of other students who were not dismissed, as well as the comments about which Petitioner complains with comments made on the written work submitted by other students who passed the requirements and who were not dismissed.

The depth of the inquiry Petitioner seeks is discernible by the allegations in the Second Amended Complaint. Petitioner alleges that Respondents Littell and Martin contradicted their lectures and the various texts utilized and relied upon when they evaluated Petitioner's written submissions. (*See*, e.g., Second Amended Complaint, Exhibit 2 to Petitioner's "Reproduction of Record", ¶¶ 8, 27, 66, 81). In order to assess whether these alleged contradictions exist, it would be necessary for the Trial Court to become familiar with the content of the professors' lecture material, and the written text and course materials, and compare those with Petitioner's written submissions and the professors' comments found therein. In order to determine if, as he alleges, Petitioner's dismissal from the graduate program was in error, it would be necessary to learn and understand the professors' criteria for satisfactory work, perform an evaluation of Petitioner's written submissions and compare them with the written submissions of all other students who received passing grades in the same course work. The results of this inquiry, then, would have to be applied to an established – and as yet unidentified – legal standard of review. It is precisely this kind of judicial second-guessing of academic decision making that is proscribed by the *Horowitz* and *Swartley* Courts.

Respondents respectfully suggest that Petitioner has produced an awkward pastiche of varied and disparate legal concepts with no discernable relevance to this Honorable Court's standard of review with respect to academic decision making. Petitioner's Second Amended Complaint avers claims based on court holdings in actions ranging from the Health Care Services Malpractice Act to insurance bad faith, from civic conspiracy to the Fair Housing Act. In fact, *each* case which is relied upon by Petitioner, and which addresses academic decisions, holds that the courts should not inquire into purely academic affairs. *See, e.g., Swartley*; *Eter*, 28 Pa. D.&C.3d at 406; *Subbiondo, supra.*

Petitioner contends that pursuant to the United States Supreme Court's holding in *Regents of the University of Michigan v. Ewing*, 474 U.S. 214, 106 S. Ct. 507 (1985), the Court must inquire whether Respondents' academic decisions are "such a substantial departure from accepted academic norm as to demonstrate that person or committee responsible did not actually exercise professional judgment." The *Ewing* decision supports Respondents' position.

In *Ewing* a student enrolled in a six-year combined undergraduate/medical school program failed a written examination taken after the first four years of study, the successful completion of which was a requirement for proceeding on to the final two years of study. Ewing averred that the university's refusal to allow him to reenter the program and retake the examination deprived him of due process because such refusal was an arbitrary departure from the university's past practice.

In ruling against Petitioner the *Ewing* Court held:

> The record unmistakably demonstrates . . . that the faculty's decision was made conscientiously and

> with careful deliberation, based on an evaluation of the entirety of Ewing's academic career. When judges are asked to review the substance of a genuinely academic decision, such as this one, they should show great respect for the faculty's professional judgment. Plainly, they may not override it unless it is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment.

Ewing, 474 U.S. at p. 225 (1985). The *Ewing* Court went on to hold that "University faculties must have the widest range of discretion in making judgments as to the academic performance of students and their entitlement to promotion or graduation." *Id.* at 225, n.11.

In the present case Petitioner's Second Amended Complaint does not aver that Professors Littell and Martin failed to exercise any professional judgment; Petitioner contends, rather, that such judgment was in error, and was not explained to Petitioner's satisfaction.

The Trial Court summarized Petitioner's claims well in the penultimate paragraph of its opinion as follows:

> We understand that Mr. Xi does not agree with the explanations provided by his professors for his failing grades. He simply refuses to accept two independent educators' appraisals of his work. This Court, however, is not equipped to "second guess" those academicians because neither Research Methodology nor Program Evaluation are within our areas of expertise. We will not

> intervene in what is clearly a purely academic decision on the part of Bryn Mawr professors. We note that the Plaintiff's pleadings lead us to the conclusion that no explanation will be sufficient enough to satisfy Mr. Xi – he simply does not believe that he deserved to fail his courses. This Court does not have the power to force the Plaintiff to understand his teachers' explanations. Nor are we able to force the Professors to re-explain in a different manner what they have already explained to Mr. Xi but which he continues to challenge.

See Trial Court opinion, "Appendix D" to Petitioner's Petition, at p.11.

There is, in the end, nothing that can be accomplished in this matter which would not run afoul of the general policy of this Commonwealth and its courts. Petitioner failed to satisfy the requirements of the graduate program; any further inquiry into his assertions of alleged arbitrariness or reckless indifference would embroil this Court in matters which touch upon the judgments of tenured professors with years of experience in these areas; the courts of this Commonwealth and this country have determined that these determinations should be given deference by the legal process.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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(2)

Supreme Court, U.S.
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PASC No. 188 MAL 2005

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In the

Supreme Court
of the United States

Haiying Xi, Petitioner

v.

Bryn Mawr College et al, Respondents

On Petition For Writ of Certiorari
To The Supreme Court of Pennsylvania

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Haiying Xi
Petitioner
213 S. 45th St
Philadelphia, PA 19104
215-222-5463

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INTRODUCTION

The decision of the courts below should not be allowed to stand, because the courts below (1) selectively avoid the crucial facts under dispute and (2) incorrectly suggest that under the doctrine of academic freedom – a special concern of the First Amendment and the other federal case laws a college student does not have the right to know of the reason for the grade after a teacher assigns a grade and does not have the right to know of the correct answer from his teacher simply because the teacher's short comments claim that the student's answer is wrong.

Respondents' Brief in Opposition to the Petition for Writ of Certiorari demonstrates that the Petition should be granted not only because of Respondents' continuation to avoid the crucial facts in order to distort the issues affecting million students' basic educational rights and the foundation of education but also because of the error in the standard or ambiguity surrounding the standard regarding whether a college teacher's range of discretion for academic decision can be extended to suppress a student's educational right to review a teacher's reason for the grade and to request a teacher to provide a correct answer under the doctrine of academic freedom and the other federal case laws such as *Board of Curators of the University of Missouri v. Horowitz, 435 U.S. 78, 95 S. Ct 948 (1978) and Regents of the University of Michigan v. Ewing, 747 U.S. 214, 106 S. Ct. 507 91985).* This Court should correct the error or clarify the standard.

REASONS FOR GRANTING THE WRIT

I. THE COURT SHOULD CLARIFY IF COLLEGE FACULTY'S RANGE OF

DISCRETION FOR ACADEMIC DECISION CAN BE EXTENDED TO SUPRESS STUDENTS' RIGHT FOR KNOWLEDGE

For the instant case, one of the fundamental issues under dispute is whether Petitioner's request for Mr. Martin and Ms. Littell to clarify their short comments on Petitioner's test/papers and to provide the correct answers constitutes a college student's basic educational right for knowledge or an invade of college faculty's academic decision.

To clarify the issue, Petitioner has to present two sample questions that Petitioner raised after reading Mr. Martin and Ms. Littell's comments.

Mr. Martin taught Program Evaluation. According to Mr. Martin, one of the core requirements for this course was to understand that in order to evaluate the effect of a program people should compare its outcome with the outcome either from previous test or from an equivalent group not affected by the program. Therefore, when Petitioner found that an author claimed that an employment program worked well for a particular group without presenting previous data or the outcomes from an equivalent group not affected by the program, following Mr. Martin's instruction, Petitioner points out that such a conclusion could not be reached. Mr. Martin held that Petitioner misunderstood the core concept because to him "these outcomes seem pretty clear." (Exhibit 1-B attachment)

To understand Mr. Martin's comment and how he reached his conclusion, Petitioner asked him, "Do we know about the employment outcome for non-offenders prior to the program or do we need not to know of it before we make such a clam?" Without any information, "based on what standard, these outcomes are clear?" Mr. Martin does not dispute that

Petitioner's question is about the core content of his course and is the core knowledge that he must deliver for his class. Later, Petitioner presented the exact citation from the textbook that Mr. Martin used for the class for him to review.

Ms. Littell taught Research Methodology. One of the core contents for her course is the methods of sampling. When explaining the concept of systematic sampling, Petitioner cited an example of room numbering system for an apartment building from the textbook. Ms. Littell held that Petitioner misunderstood the basic concept because according to her it was an example of the cluster sampling rather than of the systematic sampling. She wrote a two- word comment "cluster sampling." After reading her comment, Petitioner presented the textbook for her to review. The textbook exactly specifies that this is an example of systematic sampling. Petitioner asked Ms. Littell to clarify the conflict between her two- word comment and the textbook.

Both Mr. Martin and Ms. Littell refused to clarify their comments and refused to tell Petitioner what correct answers should be.

For the above two examples, Mr. Martin and Ms. Littell do not dispute that they are two college teachers and Petitioner was a college student. They do not dispute that they failed Petitioner's test/papers because Petitioner misunderstood the basic academic concepts. They do not dispute that Petitioners' questions about their comments on Petitioner's test/papers are the core contents for their courses and the basic knowledge that Petitioner as a student must grasp and they as teachers must deliver. They do not dispute that their comments did not offer any information regarding what correct answers should be. They do not dispute that Petitioner presented the

correct citations from the textbooks for them to review. They do not dispute that the textbooks presented by Petitioner are true. They do not argue until this point that the citations from the textbooks directly conflict with their comments but correspond to Petitioner's answers.

What do they argue? They argue that it will violate the doctrine of academic freedom and a series of the federal case laws such as *Regents of the University of Michigan v. Ewing, 474 U.S. 214, 106 S. Ct 507 (1985)* if they tell Petitioner what correct answers should be and clarify their comments with Plaintiff according to their range of discretion.[1] In other words, they argue that it is the general policy under the US laws a college teacher should not tell students what correct answer should be even though this is a basic academic knowledge that a teacher is supposed to deliver as long as this teacher's short comment holds that this student misunderstands a basic academic concept!

Petitioner argues that a student has the right to ask his teacher to clarify his comments, to provide a correct answer, and to deliver the knowledge that a student should grasp. No student can learn anything from Mr. Martin's comment "these outcomes seem pretty clear" since the academic standard and his teaching obligation requires him to teach how the outcomes became clear to him when he had neither previous data nor an equivalent group to compare. As teachers, Respondents are obligated to explain. Petitioner strongly believes that the doctrine of academic freedom and the federal laws protect students' right in this aspect.[2]

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[1] Respondents' Brief In Opposition, page 11, 3rd paragraph.

[2] Most federal case laws recognize that students received plenty of explanation s before being dismissed. For example, in *Board of Curators of the University of Missouri v. Horowitz 435 U.S.*

The courts below sided with Respondents' argument. The trial court held that by writing a comment such as "outcomes seem pretty clear", and by refusing to tell if the textbook is wrong by mixing up a systematic example with a cluster example, Mr. Martin and Ms. Littell had already explained what correct answers should be. If Petitioner wanted to find how the outcome became clear to Mr. Martin when he had neither previous data nor an equivalent group to compare the outcomes, or why Ms. Littell's example of cluster sampling is opposite to the one in the textbook, Petitioner "continues to challenge" and "no explanation will be sufficient enough to satisfy Mr. Xi."[3] because "University faculty must have the widest range of discretion in making judgment as to the academic performance of students and their entitlement to promotion or graduation." *Regent of the University of Michigan v. Ewing, 474 U.S. at p.225 (1985).* [4] Thus, university faculty's widest discretion can be extended to suppress a student's request for a correct answer about a basic academic concept that a teacher is obligated to deliver as long as the teacher can declare that the outcomes seem pretty clear to him. Any further request shall damage academic freedom from thriving; therefore, shall be prohibited by the laws.

The conflict in application of the doctrine of academic freedom and the above federal and state

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*78, *93, 98, S. Ct. 948, 957 (1978)* Student had numerous meetings with and received letters from advisor, committee and dean. In *Regents of the University of Michigan v. Ewing, 474 U.S. 214, *216, 106 S. Ct 507, **509,* In response to a written request from student, the Board allowed student to appear personally and to explain why he believed that the score did not reflect his academic potential.

[3] The trial court's opinion, page 18, paragraph 1

[4] The trial court's opinion, page 17, paragraph 2

case laws for the instant case indicates ambiguity between students' right for knowledge, university faculty's obligation to deliver knowledge, and college faculty's range of discretion as to academic decision. The previous federal case laws contain flaws because they do not provide any guideline regarding whether a college student has the right to ask a faculty member to clarify the comments on a student's works when the comments cause a great deal of confusion; whether this kind of request from a student may invade a faculty member's range of discretion as to judgment of students' academic performance protected by the doctrine of academic freedom- a special concern of the First Amendment; and whether a college student's right to make such a request should be excluded from the protection of the same doctrine of academic freedom. This case now gives the Court the opportunity to articulate clear the guideline for the issue that will affect thousands of college students and their families' basic educational right.

II. THE ISSUES HIDED BY THE COURTS BELOW AND RESPONDENTS AFFET ALL COLLEGE STUDENTS AND THEIR FAMILIES' RIGHT IN THIS COUNTRY

In the Pleading, Petitioner has averred several issues that affect the interest to all college students and their families and the future of academic freedom in this country. However, all these issues have been purposely omitted by the trial court when it summarized Petitioner's operative pleading. [5] One of

[5] If this Petition is granted, Petitioner will go over every single paragraph of the Operative Pleading summarized by the trial court and to point out what facts have been omitted by the trial court and how.

the issues is whether Petitioner as a student has the right to know of his teacher's reason for the grade. The fact underlying the issue is that after Ms. Needleman, a teacher, assigned Petitioner's final paper a very low grade which disqualifies Petitioner's enrollment in the program, Ms. Needleman refused to return the final paper with her comments to Petitioner even though Petitioner had made four formal written requests. As a result, Petitioner had no idea for what reason Petitioner's paper received such a low grade. Petitioner averred this issue in the pleading. Respondents denied that the school's policy requires a teacher to return the paper to a student in the Response. However, after Petitioner presented the school's policy to demonstrate that Respondents' answer was false, both the trial court and Respondents deliberately avoided mentioning this issue again.

We all understand and agree that a student's right to review the finished assignment with a teacher's input is an integrated part of the educational process in this country. Students will not be able to grasp any knowledge if they are prohibited from reviewing their assignments with their teacher's input except for a grade. However, this unbelievable situation happened to Petitioner.

When a court reviews a case like this, the curt must answer two important questions answers. First, if Petitioner was only person in the category receiving such maltreatment under the similar situation, and second, what may happen if the same treatment is expanded to everyone in the same category. The first question is a test for discrimination and the second question is a test for the interest to the general public. Here, a court's answers to both questions must be consistent and must have no contradiction. In other words, if this

Court allows a special treatment for one individual, this Court must allow the same treatment to every individual in the same category.

Now the issue before this Court is if every college student is prohibited from reviewing his teacher's reasons for the grade and from access to his finished assignment, will this kind of educational policy or practice help college students to grasp the knowledge and skills, improve educational quality in the US campus and promote academic freedom in this country? As the consumers for college education, should college students and their families still pay thousands of dollars for their tuitions when they are even not allowed to know what correct answers should be from their teachers? If the Court can not reach a positive conclusion, then, a reverse of the trial court's decision is the only option for this Court to make. This case provides this Court the opportunity to clarify this issue that affects every college student and their families.

III. NO ISSUE REQUIRES THIS COURT TO SECOND GUESS

The last resort that Respondents claim in their Brief is that the Court is not the place to second guess academic decisions and that the court's review will make it necessary for the court to "become familiar with the contents of the professors' lecture material..." [6] Respondents' arguments have no factual ground.

Respondents distorted the facts and issues. The case records clearly demonstrate that after Petitioner found that Ms. Needleman refused to

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[6] Respondents' Brief In Opposition, from the last paragraph of page 10 to page 11.

return the final paper with her comments and Mr. Martin and Ms. Littell refused to clarify their comments but lied that they did, Petitioner reported the incidents to the school authorities: the Committee of Doctoral Program, Dean of the School and President of the College. Petitioner submitted Mr. Martin and Ms. Littell's short comments along with the correct citations from the textbooks for these authorities to review.

Respondents do not deny that the Committee of Doctoral Program is the academic authority with the full academic capacity to review every academic issue. Respondents also do not deny that Dean of the School and President of the College have supervisory responsibility for their faculty members.

However, following Respondents' logic, this Court may need to declare that this Court is not able to second guess should a college teacher tell a student of the reason for the grade; should a college student have the right to ask his teachers to clarify their comments; whether Mr. Martin really answered Petitioner's questions after he sent his e-mail to Petitioner on 6/11/2001;[7] should the Committee of Doctoral Program take action after receiving Petitioner's report according to the school policy; should Dean of the School and President of the College find for what reason Ms. Needleman refused

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[7] Exhibit 1-C. Please note that although now Mr. Martin argues his short comments fully answered Petitioner's questions about his comments, his e-mail didn't say that he had already answered Petitioner's questions and therefore it would not be necessary to re-explain them as the trial court held. Instead, he recognized Petitioner's questions and wanted to meet Petitioner in person (secretly?) to discuss them. This Court simply needs to ask if such a meeting took place as Mr. Martin told Dean of the School and President of the College. If yes, when, where and how. Furthermore, what questions did he explain to Petitioner? This Court does not need to second guess this issue.

to release the final paper with her comments; and if it is possible for Dean of the School and President of the College to conclude that Mr. Martin and Ms. Littell fully explained Petitioner's questions when they had no idea about when, where and how they met Petitioner and what their explanations were? Or this Court may have to study Research Methodology and Program Evaluation before being able to answer the above questions or to review Respondents' policies? Besides making empty arguments, Respondents never dared to link their arguments with any concrete fact.

All the above facts directly reveal whether Respondents treated Petitioner fairly. If this Court addresses the above facts and issues with a simple yes or no answer, the instant case is solved without comparing "the substance of what Petitioner wrote to that of other students who were not dismissed..."as Respondents falsely suggested. [8]

CONCLUSION

For the foregoing reasons, this Court should grant this petition and directly address whether a college student's right to review a teacher's reason for the grade and to request a teacher's clarification about the comments on his work should be prohibited under the doctrine of academic freedom- a special concern of the first amendment, Ewing case law, and other federal case laws.

Respectfully submitted

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[8] Respondents' Brief In Opposition, page 11, paragraph 1